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Presidential Documents

Title 3—

The President

Proclamation 5580 of December 2, 1986

National Aplastic Anemia Awareness Week, 1986

By the President of the United States of America

A Proclamation

Aplastic anemia is a potentially fatal disease that results from the bone marrow ceasing to produce formal elements of the blood—the red blood cells, the white blood cells, and the platelets. The disease is responsible for the deaths of 2,000 Americans each year. One-half of the cases of aplastic anemia result from unknown causes. The other half are the result of certain drugs such as anti-inflammatory drugs or anticonvulsant drugs, or chemicals such as benzene or arsenic, or radiation. Aplastic anemia also is a complication of certain anticancer drugs.

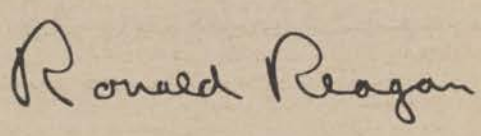
Until recently, the onset of aplastic anemia led inexorably to death. Now, however, more and more patients survive the disease. New drug treatments and bone marrow transplantation in certain cases have led to this improving picture.

The hope for the future is research. The Federal government supports a national program of research into the causes, prevention, and treatment of aplastic anemia under the auspices of the National Heart, Lung, and Blood Institute. The scientists in that Institute and in other research laboratories across the country are working to bring to light the hidden secrets of this disease.

In order to focus public attention on and increase awareness of aplastic anemia and other bone marrow diseases, the Congress, by Public Law 99–454, has designated the week of December 1 through December 7, 1986, as "National Aplastic Anemia Awareness Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of December 1 through December 7, 1986, as National Aplastic Anemia Awareness Week. I invite all Americans to join in appropriate activities to assure a better understanding of this rare but serious disease.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of December, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.



[FR Doc. 86–27507
Filed 12–3–86; 2:29 pm]
Billing code 3195–01–M

Presidential Documents

Proclamation 5581 of December 2, 1986

National Epidermolysis Bullosa Awareness Week, 1986

By the President of the United States of America

A Proclamation

Epidermolysis bullosa is a group of hereditary, blistering disorders that involves the skin and mucous membranes, especially mucous membranes of the mouth, eye, and gastrointestinal tract. Symptoms of the disease can resemble severe burns and can be very painful and debilitating. The disease can lead to scarring, malnutrition, anemia, and even premature death.

As many as 50,000 Americans, most of them children, are affected by epidermolysis bullosa. The disease not only disables people physically and emotionally, it also places a severe financial burden on their families.

Basic research is just beginning to reveal the underlying causes of epidermolysis bullosa. Recent developments in biology, biochemistry, pathology, immunology, and genetics are all being employed to study the disease. The main objectives are to understand the basic mechanisms that lead to this distressing disorder and to develop therapies directed at correcting these effects.

The Federal government and private volunteer organizations have developed a strong and enduring partnership committed to research on epidermolysis bullosa. I am confident that this concerted effort will ultimately uncover the cause and cure for this devastating disease.

The Congress, by Public Law 99–459, has designated the week beginning December 1 through December 7, 1986, as "National Epidermolysis Bullosa Awareness Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning December 1 through December 7, 1986, as National Epidermolysis Bullosa Awareness Week. I call upon all Americans to participate in activities designed to heighten awareness of the plight of epidermolysis bullosa sufferers.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of December, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86–27508
Filed 12–3–86; 2:30 pm]
Billing code 3195–01–M

Presidential Documents

Proclamation 5582 of December 2, 1986

National Pearl Harbor Remembrance Day, 1986

By the President of the United States of America

A Proclamation

In the annals of American history, only a few events are so well-known and so deeply rooted in national remembrance that the mere mention of their date suffices to describe them. Of these occurrences, none could have had more significance for our Nation than December 7, 1941.

On that Sunday morning, 45 years ago, the Imperial Japanese Navy launched an unprovoked, surprise attack upon units of the Armed Forces of the United States stationed at Pearl Harbor, Hawaii. This attack claimed the lives of 2,403 Americans, wounded 1,178 more, and damaged our naval capabilities in the Pacific. Such destruction seared the memory of a generation and galvanized the will of the American people in a fight to maintain our right to freedom without fear.

Every honor is appropriate for the courageous Americans who made the supreme sacrifice for our Nation at Pearl Harbor and in the many battles that followed in World War II. Their sacrifice was for a cause, not for conquest; for a world that would be safe for future generations. Their devotion must never be forgotten.

We honor our dead by solemn ceremony. We do so as well by protecting the Nation and the freedom they protected and by forging the resolve, the strength, and the military preparedness necessary to deter attack and to preserve and build the peace. As President Franklin Roosevelt told our Nation the day after Pearl Harbor was attacked, "It is our obligation to our dead—it is our sacred obligation to their children and our children—that we must never forget what we have learned."

We have not forgotten, nor will we. We live in a world made more free, more just, and more peaceful by those who will answer roll call no more, those who will report for muster never again. We do remember Pearl Harbor.

The Congress, by Public Law 99–534, has designated December 7, 1986, as "National Pearl Harbor Remembrance Day" and authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim December 7, 1986, as National Pearl Harbor Remembrance Day, and I call upon the people of the United States to observe this solemn occasion with appropriate ceremonies and activities and to pledge eternal vigilance and strong resolve to defend this Nation and its allies from all future aggression.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of December, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

FR Doc. 86-27509
Filed 12-3-86; 2:31 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5583 of December 2, 1986

National SEEK and College Discovery Day, 1986

By the President of the United States of America

A Proclamation

Every American should have the opportunity to pursue an education beyond the high school level. Colleges and universities enhance the mental and moral development of their graduates. The future of our country depends on equal access to education for all students, including members of minority groups and the economically disadvantaged. All educators should be aware of and support efforts that recognize and offer educational opportunities to underprivileged students.

The City University of New York has implemented two programs—College Discovery for community college students and SEEK (Search for Elevation, Education, and Knowledge) for senior college students—that provide specialized counseling, remedial instruction, and tutorial services enabling nearly 14,000 disadvantaged students a year to receive the benefits of a college education.

Almost 100,000 students have participated in the SEEK and College Discovery programs since their inception 20 years ago, which the City University of New York is celebrating in a special ceremony on December 11, 1986. The concept and innovative educational techniques employed by the SEEK and College Discovery programs have served as a forerunner and model for college remedial programs across our country and for Federal programs under Title IV of the Higher Education Act of 1965.

The Congress, by Public Law 99–512, has designated December 11, 1986, as "National SEEK and College Discovery Day" and authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim December 11, 1986, as National SEEK and College Discovery Day. I invite the Governors of every State, college presidents, alumni, graduate and undergraduate students, community leaders, school superintendents, educators, students, parents, and all Americans to observe this day with appropriate education activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of December, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86–27510
Filed 12–3–86; 2:32 pm]
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Presidential Documents

Proclamation 5584 of December 3, 1986

Year of the Reader, 1987

By the President of the United States of America

A Proclamation

"To read well, that is to read true books in a true fashion, is a noble exercise," wrote Thoreau. The ability to read and write effectively is essential to the vitality of the mind and to success and accomplishment in every field of endeavor. Some with the ability to read may seldom think of the blessings it bestows, but, sadly, those without it know the difficulty they have in leading fully satisfying lives. They are denied the joy, the knowledge, and the exposure to opportunities that come through mastery of reading skills. They also lack a vital employment skill in our increasingly information-rich society.

During 1987, we will celebrate the Bicentennial of the United States Constitution, one of the greatest documents of Western civilization and democratic thought. Every American should be able to read this national testament with full understanding. That goal alone should mobilize us to make ours a fully literate Nation, because our history demonstrates that literacy and real political freedom go hand in hand. Our Nation's heritage of liberty and self-government depends on a literate, informed citizenry.

For these reasons and more, the ability and opportunity to read are of fundamental importance to everyone. The National Commission on Reading, the Librarian of Congress, and others have recently reported that an alarmingly large number of Americans are not able or motivated to read. The Center for the Book in the Library of Congress also has noted the importance of focusing national attention on the importance of reading and strengthening national and local efforts to give all Americans the beauty, the promise, and the gift of reading.

The Congress, by Public Law 99–494, has designated 1987 as the "Year of the Reader" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the year of 1987 as the Year of the Reader, and I invite the Governors of every State, employers, government officials, community leaders, librarians, members of the business community, publishers, school superintendents, principals, educators, students, parents, and all Americans to observe this year with appropriate educational activities to recognize the importance of restoring reading to a place of preeminence in our personal lives and in the life of our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of December, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86–27511
Filed 12–3–86; 2:33 pm]
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 637]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 637 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period December 5–11, 1986. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

DATE: Regulation 637 (§ 907.937) is effective for the period December 5–11, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986–87 adopted by the Navel Orange Administrative Committee. The committee met publicly on December 2, 1986, in Lindsay, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of 8 to 1, with one abstention, a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that demand is slow.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Agricultural Marketing Service, Marketing agreements and orders, California, Arizona, Oranges (navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.937 Navel Orange Regulation 637 is added to read as follows:

§ 907.937 Navel Orange Regulation 637.

The quantities of navel oranges grown in California and Arizona which may be handled during the period December 5 through December 11, 1986, are established as follows:

(a) *District 1:* 1,656,399 cartons;
(b) *District 2:* 100,000 cartons;
(c) *District 3:* Unlimited cartons;
(d) *District 4:* Unlimited cartons.

Dated: December 3, 1986.

Thomas R. Clark,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–27530 Filed 12–4–86; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Regulation 538]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 538 establishes the quntity of fresh California-Arizona lemons that may be shipped to market at 285,000 cartons during the period December 7–13, 1986. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 538 (§ 910.838) is effective for the period December 7–13, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant

economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986–87. The committee met publicly on December 2, 1986, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of 9 to 3, with one abstention, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is steady, with demand remaining weak for larger sizes of lemons and good for smaller sizes.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulaton is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisons effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, and Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.838 is added to read as follows:

§ 910.838 Lemon Regulation 538.

The quantity of lemons grown in California and Arizona which may be handled during the period December 7 through December 13, 1986, is established at 285,000 cartons.

Dated: December 3, 1986.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–27529 Filed 12–4–86; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 86–023N]

Response to Comments; Irradiation of Pork for Control of Trichinella Spiralis

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Confirmation of final rule; response to comments.

SUMMARY: In the **Federal Register** of January 15, 1986 (51 FR 1769), the Food Safety and Inspection Service (FSIS) published a final rule to amend the Federal meat inspection regulations to permit the use of gamma radiation for control of *Trichinella spiralis* in fresh or previously frozen pork. This action followed the Food and Drug Administration (FDA) final rule of July 22, 1985 (50 FR 29658), which permitted the use of gamma radiation at an absorbed dose between 0.3 kiloGray (30 Krad) and 1 kiloGray (100 Krad) for treatment of pork carcasses or fresh non-heat-processed cuts of pork carcasses to control *Trichinella spiralis*. This document confirms the final rule and responds to the comments received.

DATE: The final rule was effective January 15, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret O'K. Glavin, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6042.

SUPPLEMENTARY INFORMATION:

Comments

During the comment period of 60 days from January 15, 1986, to March 17, 1986, FSIS received a total of 10 comments on the final rule. Three comments were from consumer groups and 7 comments were from individual consumers. There were an additional 9 comments received from individual consumers after March 17, 1986. These additional comments are also addressed in this notice.

1. Regulatory Procedures

One commenter opposed to food irradiation argued that FSIS's final rule of January 15, 1986, was invalid because FSIS has failed to follow its rulemaking procedures under 9 CFR 318.7(a)(2). Under that provision FSIS may authorize new substances for use in the preparation of meat food products if they have been previously approved by FDA and are listed in FDA's regulations (21 CFR Parts 73, 74, 81, 172, 173, 182, or 184). Because irradiated food is covered by 21 CFR Part 179, of the FDA regulations, which was not cited in FSIS's procedural rule, the commenter argued that FSIS erred by issuing a final rule under that authority.

FSIS does not agree with this interpretation. When FSIS published its current rules (48 FR 32749; Tuesday, July 19, 1983) for approving new substances to be used in preparing meat products, it stated that "... applicants will be required to show that the substance has been affirmed by the Food and Drug Administration (FDA) as generally recognized as safe (GRAS) or is an approved food additive or color additive listed by FDA as appropriate for the intended use." At that time, FSIS cited all Parts of 21 CFR which were applicable to meat and poultry. Part 179, pertaining to irradiated food, was not cited originally because no meat or poultry products were then included in the FDA's food irradiation provisions.

Part 179 was added to the list of 21 CFR citations in FSIS's final rule on the irradiation of pork for control of *Trichinella spiralis*. By acting in this manner FSIS merely added to the list of FDA Parts which applied to meat and poultry without affecting the procedural rules themselves.

2. Public Comment

Another issue raised by the same commenter stated that FSIS should have allowed an opportunity for public comment instead of making the final rule effective on the date of its publication.

FSIS addressed this issue in the preamble to the final rule. It was stated that FSIS would proceed with final rulemaking to authorize a new substance for use in meat products upon its approval by FDA, and upon a further

determination that its use (in this case irradiation) would not render the product adulterated, misbranded, or otherwise not in compliance with the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*). Furthermore, the substance must be suitable and functional for the product and used at the lowest level necessary to obtain the desired technical effect. Each of these criteria was met in the case of pork irradiation. A comprehensive rulemaking proceeding is unnecessary where prior review by the FDA has served to resolve all legitimate questions regarding both the safety and the functional properties of a given substance.

As to making the final rule effective upon publication, FSIS acted properly under authority of the Administrative Procedure Act (5 U.S.C. 553(d)(3)). In the final rule FSIS announced that the rule would become effective on publication based upon the fact that FDA has previously approved the use of ionizing radiation in the range of 30 to 100 Krad to be safe and suitable for treatment of carcasses and cuts of fresh pork (non-heat-processed or unfrozen) to control *Trichinella spiralis*, and that additional delay in permitting commercial use of this process would serve no public purpose. FSIS finds no compelling reason to alter that position.

3. Regulatory Impact Analysis

The same commenter also asserted that a regulatory impact analysis should have been prepared for the pork irradiation rule under Executive Order 12291. It was contended that this rule qualified as a "major rule" under the Order because it would result in an annual effect on the economy of over $100 million. In support of this statement, the commenter referenced and included an unpublished paper which purported to show such an impact.

FSIS has previously determined that the final rule authorizing pork irradiation is not a major rule under Executive Order 12291. The unpublished paper referenced above has been reviewed and found to contain no quantitative data which refute this determination. Consequently, FSIS has no basis for altering its prior conclusion that the analytic requirements of Executive Order 12291 are inapplicable to the pork irradiation rulemaking.

4. Safety

Some commenters were concerned about the safety and carcinogenicity of the irradiated pork. On July 22, 1985, FDA approved the use of low-level irradiation doses (30–100 Krad) for fresh, non-heat-processed pork or carcasses to control *Trichinella spiralis*, a parasite found in pork (50 FR 29658). In evaluating the use of irradiation, FDA also considered scientific data from studies sponsored by the U.S. Army-USDA Agriculture Research Service (ARS) to determine the wholesomeness of chicken parts sterilized with a high megarad dose of ionizing radiation. Furthermore, the Center for Food Safety and Applied Nutrition evaluated the safety data from a U.S. Department of Agriculture sponsored study, conducted by Raltech Scientific Services. The Center evaluated the relevant histopathology data from the study and found no treatment-related effect that is either biologically or statistically significant. On the basis of the FDA approval, FSIS published its January 15, 1986, final rule amending the Federal meat inspection regulations to permit the use of low-dose gamma radiation to control *Trichinella spiralis* in fresh or previously frozen pork.

5. Radiolytic Compounds

Some commenters expressed concern that the irradiation of food may form some radiolytic compounds that are not proven to be safe. Food scientists have known that certain chemical and physical changes will take place in a food when it is subjected to any processing treatment (e.g., canning, drying, freezing, or cooking, as well as irradiation). Research in the area of irradiated ground meats, including ground pork, has revealed that when a complex food system containing fat, such as beef or pork, is irradiated, changes are observed most often in the fat tissues. (Ref. 5) Scientific research has also shown that considerable amounts of decomposition products are produced in fats when they are heated even at normal cooking temperatures. Examination of the literature reveals that far more decomposition products have been identified from heated or thermally oxidized fats than from irradiated fats. (Ref. 1) The chemical changes produced in food by ionizing radiation are in general much less severe than those changes that are produced by other conventional methods of food processing such as cooking and freezing. The production of ions in food is a characteristic of ionizing radiation, and the chemical substances formed as a result of the reactions of these ions are similar to substances which are found either as natural constituents of food or are formed as a result of other methods of treating food, such as cooking and heating. (Ref. 2) For example, some compounds in food, particularly polyunsaturated fats, form free radicals by irradiation. This may lead to a higher production of oxidative compounds similar to the compounds found in fats of cooked or stored food products. (Ref. 2)

6. Effect on Nutrients

Some commenters expressed their concerns on the nutrient loss—particularly, vitamin loss in irradiated pork. Available literature on foods indicates that all methods of preservation and processing reduce the nutritional value of food to some extent. The loss of nutrients in irradiated food is similar to that in other methods of food processing such as cooking and drying. The nutrients most often affected are vitamins, which show different degrees of susceptibility to irradiation in different foods. In general, at absorbed doses up to a dose of 100 Krad, nutrient losses are very small. At levels around 1,000 Krad, some vitamins such as ascorbic acid, thiamine, and pyridoxine exhibit losses, depending on the food and the temperature at which irradiation is carried out. (Ref. 3) It has been reported that even at doses used for commercial sterilization (3,000 Krad), at temperatures below freezing no significant impairment of the nutritional quality of the protein, lipid, and carbohydrate constituents in food products was observed. (Ref. 4 and Ref. 5) A report published by the World Health Organization in 1981 suggested that in the irradiation of food at low-dose ranges up to 100 Krad, nutrient losses are insignificant, and in the range of up to 1,000 Krad, losses of some vitamins may occur. (Ref. 6) Research in the area of pork indicated that irradiation of ground pork up to 6,000 Krad at a temperature well below freezing resulted in less than a 10-percent destruction of pantothenic acid and no destruction of folic acid. (Ref. 7) Also, literature has shown that irradiation of cooked pork at 100 Krad causes destruction of a certain amount of thiamine and pyridoxine, but relatively little destruction of riboflavin and niacin. (Ref. 8)

7. Eating Quality

One commenter was concerned about the eating quality aspects of irradiated pork which may cause off-flavors. Research has shown that "off-odors," if any, are found only when pork is irradiated at dose levels much higher than permitted level of 100 Krad for pork. (Ref. 2)

8. Effect of Irradiation on Sodium Chemistry

One commenter was concerned that irradiation may induce the formation of radioisotope sodium-24 in pork. Some forms of ionizing radiation can cause nuclear reactions, which lead to the induction of radioactivity in the irradiated material. The extent to which any radioactivity is induced depends on the energy level. It is not possible for food irradiated at energy levels proposed for use in the food industry to become radioactive. The gamma-ray energy levels for the sources approved for treating pork (radioisotopes Cobalt-60 or Cesium-137) range from 0.66 MeV to 1.33 MeV. The threshold for inducing radioactivity is above 10 MeV, far above the levels we have approved. (Ref. 10) Further, the sodium-24 isotope is produced through a thermal neutron reaction. Because only gamma radiation sources have been approved for the irradiation of pork, the commenter's concern is not valid.

9. Post-Irradiation Dosimetry

One comment received questioned how one can detect if a food product such as pork has been irradiated or re-irradiated. At the present time there is no analytical method available for detecting whether a food has been irradiated. The procedure to assure that the product has received a proper absorbed dose is included with documentation submitted by each facility as a part of its quality control procedures. FSIS inspectors will monitor the procedures and will make sure that the process is performed in accordance with limitations in the final rule.

Recently, FSIS has contracted with the National Bureau of Standards (NBS) to develop a post-irradiation dose measuring method for determining whether a meat or poultry product has been treated with ionizing radiation to an absorbed dose exceeding 10 Krad. (Ref. 11)

A preliminary progress report of the FSIS/NBS contract on post-irradiation dosimetry and analytical techniques used for measuring radiolytic compounds produced from irradiation of some amino acids (phenylalanine, tyrosine, and tryptophan) indicates that this approach may help to solve this problem. (Ref. 12)

10. Labeling Issues

Some comments addressed the labeling requirements of irradiated pork products. FSIS believes that full and complete disclosure of irradiation on labels is necessary to ensure that pork which is irradiated is properly identified and labeled. Products in commercial distribution channels must be clearly labeled as irradiated, and the labeling must be maintained at every stage of distribution to prevent the possible re-irradiation of foods. Specifics on the labeling requirements for irradiated pork will be developed through a further notice and comment rulemaking. Until another rule is published, FSIS will follow general labeling requirements for meat products as listed in 9 CFR 317.2. Decisions with respect to the labeling of such products to ensure that they are not misbranded under section 1(n) of the Act (21 U.S.C. 601(n)) will be made on a case-by-case basis pursuant to section 7 of the Act (21 U.S.C. 607).

11. Quality Control

There were some comments on the requirements for controlling the process, inspecting facilities, and checking the credibility of the processors. The Agency has developed guidelines for plant operating procedures, dosimetry, safety and training of inspectors, sanitation, facilities and equipment, and quality control programs. (FSIS Notice 26–86, 1986)

Regulations on the use of radioisotopes and protection against radiation, basic safety considerations and matters such as source, the irradiator safety system, training and experience of personnel, and the radiation safety program operation of the irradiator are all regulated by the Nuclear Regulatory Commission (NRC). (See 10 CFR Parts 20 and 50).

12. Other Alternative Methods

Some commenters suggested the use of alternative methods, such as Enzyme-Linked Immunosorbent Assay (ELISA), in lieu of irradiation to control trichinosis. It is imperative that a distinction be made between control methods and detection methods. Control methods, such as the use of low-dose irradiation of up to 100 Krad, are treatments that ensure that treated hog carcasses or specific pork products are not the sources of trichinella infection. Detection methods, such as immunoassay, are diagnostic in nature, and are used in identifying trichina-infected swine. The ELISA method detects the trichina antibody in the blood of infected swine. (Ref. 13) The Agency has received a petition to approve immunoassay methods as a means to test for trichinae. It is expected that FSIS will make a decision on this petition shortly. Further, § 318.10 of the Federal meat inspection regulations (9 CFR 318.10) prescribes treatments of pork and pork products to destroy trichinae. The treatments consist of heating, refrigerating or curing pork products. In general, these regulations do not require the treatment of fresh pork or pork products that are customarily well cooked in the home or elsewhere before being served to the consumer. FSIS's policy has been to educate consumers to cook fresh pork to a minimum internal temperature of 170 °F for well done and 160 °F for medium.

Having considered public comments submitted in response to the final rule of January 15, 1986 (51 FR 1769), FSIS confirms its findings as to the efficacy and safety of pork irradiation when conducted within the limits of and under conditions specified by that rulemaking. The final rule amending 9 CFR 318.7 is, therefore, affirmed as published, without change.

Done at Washington, DC, on November 28, 1986.

Lester M. Crawford,

Acting Administrator, Food Safety and Inspection Service.

References

1. Nawar, W.W. "Radiolysis of Nonaqueous Components of Foods." *Preservation of Food by Ionizing Radiation*, Vol. II, Chap. 2, ed. Edward S. Josephson and Martin S. Peterson. CRC Press, 1983.

2. "The Radiolytic Products in Irradiated Food" *in* "Toxicological Aspects of Food Irradiation." *Report on the Safety and Wholesomeness of Irradiated Foods*, by the Advisory Committee on Irradiated and Novel Foods, Chap. 6. Department of Health and Social Security; Ministry of Agriculture, Fisheries and Food; Scottish Home and Health Department; Welsh Office; Department of Health and Social Services, Northern Ireland, 1986.

3. "Nutritional Aspects of Food Irradiation." *ibid.*, Chap. 7.

4. Raica, N., Jr. and Howie, D.L. "Review of the United States Army Wholesomeness of Irradiated Food Program (1955–1966)." *Food Irradiation;* proceedings of the International Symposium on Food Irradiation, jointly organized by the International Atomic Energy Agency and the Food and Agriculture Organization of the United Nations, and held in Karlsruhe, 6–10 June 1966. Vienna: International Atomic Energy Agency, 1966.

5. Josephson, E.S. "Radappertization of Meat, Poultry, Finfish, Shellfish, and Special Diets." *Preservation of Food by Ionizing Radiation*, Vol. III, Chap. 8, ed. Edward S. Josephson and Martin S. Peterson. CRC Press, 1983.

6. "Wholesomeness of Irradiated Food," report of a joint FAO/IAEA/ WHO Expert Committee. *World Health Organization Technical Report Series*, no. 659. Geneva: World Health Organization, 1981.

7. Sheffner, A. Leonard and Spector, H. "Action of Ionizing Radiations on Vitamins, Sterols, Hormones, and Other Physiologically Active Compounds." *Radiation Preservation of Food*, by the United States Army Quartermaster Corps, ed. S.D. Bailey, et al.

Washington: U.S. Government Printing Office, 1957.

8. Thomas, Miriam H. and Calloway, Doris H. "Nutritional Value of Dehydrated Foods." *Journal of the American Dietetic Association*, Vol. 39, 1961.

9. "Scientific and Technological Aspects of Food Irradiation." *op. cit.*, ref. 2, Chap. 4.

10. Koch, H.W. and Eisenhower, E.H. "Radioactivity Criteria for Radiation Processing of Foods." Washington: National Bureau of Standards, 1985.

11. "Development of Post Irradiation Dosimetry Method for Food." Statement of Work, NBS/USDA/FDA contract no. FSIS 12-37-6-022.

12. "Status of the NBS Research Effort for Development of Methods for Performing Post Irradiation Dosimetry on Meats." National Bureau of Standards memorandum, 1986.

13. "Alternative Methods of Controlling Trichinosis and for Identifying Trichinae-infected Swine." *Trichinae-Safe Pork by Gamma Irradiation Processing—A Feasibility Study*, Chap. 6. U.S. Department of Energy Byproducts Utilization Program, 1983.

[FR Doc. 86-27281 Filed 12-4-86; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWP-36]

Amendment to the Stockton, CA, and Santa Barbara, CA, Transition Area Descriptions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Stockton and Santa Barbara transition areas are presently described in relation to the Stockton and Santa Barbara VORTACs. The names of these two NAVAIDs were recently changed. This action will relect the correct NAVAID name in the description of the transition areas.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297-1648.

The Rule

These amendments to Part 71 of the Federal Aviation Regulations corrects the descriptions of the Stockton, California, and Santa Barbara, California, transition areas. I find that notice and public procedures under 5 U.S.C. 553(b) are unnecessary because these actions are minor amendments in which the public would not be particularly interested. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (50 FR 13186) and (50 FR 30694), are further amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.18 [Amended]

2. Section 71.18 is amended as follows:

Stockton, CA—[Amended]

Where "Stockton VORTAC" appears, substitute "Manteca VORTAC."

Santa Barbara, CA—[Amended]

Where "Santa Barbara VORTAC" appears, substitute "San Marcus VORTAC."

Issued in Los Angeles, California, on November 21, 1986.

Wayne C. Newcomb,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 86-27310 Filed 12-4-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25142; Amdt. No. 1335]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on November 28, 1986.

John S. Kern,

Director of Flight Standards.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective February 12, 1987

Fresno, CA—Fresno-Chandler Downtown, VOR/DME-C, Amdt. 2
Fresno, CA—Fresno Air Terminal, VOR or TACAN RWY 11L, Amdt. 9
Madera, CA—Madera Muni, VOR RWY 30, Amdt. 5

. . . Effective January 15, 1987

Anniston, AL—Anniston-Calhoun County, LOC RWY 5, Amdt. 9
Washington, DC—Washington National, ROSSLYN LDA RWY 18, Amdt. 14
Orlando, FL—Orlando Executive, VOR RWY 31, Amdt. 13, CANCELLED
Orlando, FL—Orlando Intl, VOR/DME RWY 18L, Amdt. 5
Orlando, FL—Orlando Intl, VOR/DME RWY 18R, Amdt. 5
Orlando, FL—Orlando Intl, ILS RWY 18R, Amdt. 3
Tampa, FL—Tampa Intl, ILS RWY 36L, Amdt. 14
Romeoville, IL—Lewis University, VOR RWY 9, Amdt. 2
Fort Wayne, IN—Fort Wayne Muni/Baer Fld/, VOR RWY 14, Amdt. 14
Fort Wayne, IN—Fort Wayne Muni/Baer Fld/, LOC BC RWY 14, Amdt. 11
Fort Wayne, IN—Fort Wayne Muni/Baer Fld/, NDB RWY 32, Amdt. 21
Fort Wayne, IN—Fort Wayne Muni/Baer Fld/, ILS RWY 32, Amdt. 24
Fort Wayne, IN—Fort Wayne Muni/Baer Fld/, RADAR-1, Amdt. 21
Indianapolis, IN—Indianapolis Terry, ILS RWY 36, Amdt. 2
Lexington, KY—Blue Grass, ILS RWY 22, Amdt. 9
DeRidder, LA—Beauregard Parish, LOC RWY 36, Orig
DeRidder, LA—Beauregard Parish, NDB RWY 36, Amdt. 2
Salisbury, MD—Salisbury-Wicomico County Regional, VOR RWY 14, Orig
Boston, MA—General Edward Lawrence Logan Intl, VOR/DME Rwy 15R, Amdt. 15 CANCELLED
Boston, MA—General Edward Lawrence Logan Intl, VOR/DME RWY 27, Amdt. 1 CANCELLED
Boston, MA—General Edward Lawrence Logan Intl, VOR/DME RWY 33L, Amdt. 18 CANCELLED
Alma, MI—Gratiot Community, SDF, RWY 9, Amdt. 5
Alma, MI—Gratiot Community, NDB RWY 9, Amdt. 4
Alma, MI—Gratiot Community, RNAV RWY 27, Amdt. 5
Detroit/Grosse Ile, MI—Grosse Ile Muni, VOR-A, Amdt. 5
Fremont, MI—Fremont Muni. VOR-A, Amdt. 9
Fremont, MI—Fremont Muni, VOR RWY 36, Amdt. 5
Midland, MI—Jack Barstow, VOR-A, Amdt. 5
Wells, NV—Harriet Field, VOR RWY 8, Amdt. 1, CANCELLED
Old Bridge, NJ—Old Bridge, VOR RWY 24, Amdt. 2
Chapel Hill, NC—Horace Williams, RADAR-1, Amdt. 5
Marysville, OH—Union County, NDB RWY 27, Amdt. 1
Oklahoma City, OK—Wiley Post, VOR RWY 35R, Orig

Butler, PA—Butler County, ILS RWY 8, Amdt. 2
New Castle, PA—New Castle Muni, NDB RWY 23, Amdt. 2
Camden, SC—Woodward Field, NDB RWY 23, Amdt. 4
Burlington, VT—Burlington Intl, RADAR-1, Amdt. 4
White Sulphur Springs, WV—Greenbrier, VOR-A, Amdt. 8, CANCELLED

. . . *Effective December 18, 1986*

St. Louis, MO—Lambert-St. Louis Intl, LOC RWY 12L, Orig, CANCELLED
St. Louis, MO—Lambert-St. Louis Intl, ILS RWY 12L, Orig.

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BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket No. 83C-0127]

Listing of D&C Red No. 8 and D&C Red No. 9 for Use in Ingested Drug and Cosmetic Lip Products and Externally Applied Drugs and Cosmetics

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is permanently listing D&C Red No. 8 and D&C Red No. 9 as color additives for use in ingested drug and cosmetic lip products and externally applied drugs and cosmetics. FDA is also requiring that the D&C lakes of these color additives be made only from previously certified batches of the color additive. FDA is taking this action because it has concluded that the use of these color additives in ingested drug and cosmetic lip products and externally applied drugs and cosmetics is safe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act. In addition, the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA), has withdrawn the part of its petition for the use of D&C Red No. 8 and D&C Red No. 9 in mouthwash, dentifrices, and ingested drugs, except ingested drug lip products. Therefore, D&C Red No. 8 and D&C Red No. 9 may not be added to mouthwash, dentifrices, and ingested drugs, except ingested drug lip products, after January 5, 1987. This action responds to a petition filed by CTFA.

DATES: Effective January 5, 1987, except as to any provisions that may be stayed by the filing of proper objections; objections by January 5, 1987. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register.**

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION:

I. Introduction

In 1960, Congress passed the Color Additive Amendments (the amendments). In *Certified Color Mfg. Ass'n* v. *Mathews*, 543 F.2d 284, 286-287 (D.C. Cir. 1976), the United States Court of Appeals for the District of Columbia Circuit explained the purpose of this legislation:

> The Color Additive Amendments of 1960 reflect a Congressional and administrative response to the need in contemporary society for a scientifically and administratively sound basis for determining the safety of artificial color additives, widely used for coloring food, drugs, and cosmetics. The Amendments reflect a general unwillingness to allow widespread use of such products in the absence of scientific information on the effect of these products on the human body. The previously used system had some glaring deficiencies, and the 1960 Amendments were designed to overcome them. * * *

[Footnotes omitted.]

As amended, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) (the act) provides in section 706(a) (21 U.S.C. 376(a)) that a color additive will be deemed unsafe for use in food, drugs, cosmetics, and some medical devices unless FDA has issued a regulation permanently listing that color additive for its intended use (21 U.S.C. 376(a)). FDA will issue such a regulation only if it has been presented with data that establish with reasonable certainty that no harm will result from the use of the color additive. The burden of presenting such data is on the person who is seeking approval of the use of the additive.

In passing the amendments, Congress provided for the provisional listing of the color additives in use at that time, pending completion of the scientific investigations needed for a determination about the safety of these additives (section 203(b) of the transitional provisions of the amendments, Title II, Pub. L. 86-618, 74 Stat. 404-407 (21 U.S.C. 376, note)). Section 81.1 (21 CFR 81.1) of the agency's color additive regulations enumerates those color additives that are still provisionally listed. Among them are D&C Red No. 8 and D&C Red No. 9 for use in drugs and cosmetics.

II. Regulatory History of D&C Red No. 8 and D&C Red No. 9

A. The Color Additives

The color additives D&C Red No. 8 and D&C Red No. 9 are acid dyes of the monoazo class. D&C Red No. 8, a bright red-orange pigment, is identified in *Chemical Abstracts* as the monosodium salt of 5-chloro-2-[(2-hydroxy-1-naphthalenyl)azo]-4-methylbenzenesulfonic acid (CAS Reg. No. 2092-56-0). D&C Red No. 8 is identified in § 82.1308 (21 CFR 82.1308) as the monosodium salt of 1-(4-chloro-*o*-sulfo-5-tolylazo)-2-naphthol. Other names given in the *Colour Index* are C. I. Pigment Red 53 (C. I. No. 15585), Red Lake C, and Pigment 53. D&C Red No. 9, a yellow-red pigment, is identified in *Chemical Abstracts* as the barium salt of 5-chloro-2-[(2-hydroxy-1-naphthalenyl)azo]-4-methylbenezenesulfonic acid (CAS Reg. No. 5160-2-1). D&C Red No. 9 is identified in § 82.1309 (21 CFR 82.1309) as the barium salt of 1-(4-chloro-*o*-sulfo-5-tolylazo)-2-naphthol. Other literature names are Lithol Red 2G and Lake Red C Ba. D&C Red No. 9 has the same *Colour Index* reference and number as D&C Red No. 8, given above. Both D&C Red No. 8 and D&C Red No. 9 are insoluble in acetone and benzene and slightly soluble in water and ethanol (less than 10 ppm). FDA is adopting the *Chemical Abstracts* identities for D&C Red No. 8 and D&C Red No. 9 in this final rule.

These two color additives and their lakes have no current use in ingested drug preparations except in ingested drug lip products as reported by CTFA in 1982. However, according to information supplied by CTFA and available to FDA, they have extensive use in cosmetic products such as lipsticks, rouges, face powders, blushers, and nail polishes. For example, data from FDA's Voluntary Cosmetic Regulatory Program computer file indicate that more than 1,000 cosmetic formulations contain D&C Red No. 9 lakes.

B. Status Prior to the Color Additive Amendments

The color additives D&C Red No. 8 and D&C Red No. 9 were approved for drug and cosmetic use as "coal tar" dyes following enactment of the act in 1938 by a regulation published in the **Federal Register** of May 9, 1939 (4 FR 1922). Approval of these coal-tar dyes was

based on the finding that they were "harmless and suitable for use," as required by the act at that time. Accordingly, these color additives were listed with appropriate specifications of identity and quality in the coal-tar color regulations (21 CFR Part 135, 1939 supplement) as certifiable for use in drugs and cosmetics (4 FR 1922, May 9, 1939; 4 FR 4309, September 16, 1939).

In the years following the listing of the certifiable coal-tar dyes, FDA conducted additional studies to explore more fully the potential toxicity of these color additives. The agency presented the results of studies on seven of the coal-tar dyes, including D&C Red No. 9, at a meeting held in Washington, DC, on February 5, 1959. FDA invited interested parties who attended the meeting, including the Certified Color Industry Committee, the Toilet Goods Association, and Revlon, Inc., to submit any data bearing on the toxicity of the color additives, but they did not.

Because the results of FDA's 90-day subacute feeding tests in rats indicated that these 7 coal-tar dyes were not "harmless and suitable for use," the agency proposed in the **Federal Register** of April 15, 1959 (24 FR 2875), to amend its regulations by deleting the 7 coal-tar dyes and 10 other chemically related dyes. It invited comments on the proposed action.

In the **Federal Register** of October 6, 1959 (24 FR 8065), after reviewing the comments it received, FDA published an order that delisted the 17 coal-tar dyes specified in the proposal, including D&C Red No. 8 and D&C Red No. 9. The Toilet Goods Association, Inc.; Revlon, Inc.; Smith, Kline & French Laboratories; Pharmaceutical Manufacturers Association; Ansbacher-Siegle Corp.; Richard Hudnut; and the Certified Color Industry Committee all filed objections to the delisting order.

In the **Federal Register** of February 3, 1960 (25 FR 903), FDA published a notice announcing that objections had been filed, and that these objections stated reasonable grounds for granting a hearing. The agency, therefore, stayed the 1959 delisting order pending the outcome of the hearing. The hearing was held beginning February 17, 1960.

After the hearing, FDA published its findings of fact and a tentative order on the proposed amendment of its regulations (25 FR 5582; June 21, 1960). That document ordered the deletion of 14 coal-tar dyes, including D&C Red No. 8 and D&C Red No. 9, from the color certification regulations and the listing of 10 color additives for external use only. The document also described the results of FDA's subacute toxicity studies on the seven coal-tar dyes originally tested and on two other coal-tar dyes, including D&C Red No. 8, that were tested after February 1959.

The study of D&C Red No. 8, in which that coal-tar dye was fed to rats in the diet at four dosage levels of 2.0, 1.0, 0.5, and 0.25 percent, showed lowered hemoglobin and hematocrit values at all four dosage levels. Gross pathological examination revealed animals with enlarged spleens at all dosage levels. "The livers of the test animals were enlarged at the 1 percent and 0.5 percent dosage levels and the livers of the males were enlarged at the 2 percent dosage level" (see 25 FR 5584: June 21, 1960).

The study of D&C Red No. 9, in which that coal-tar dye was fed to rats in the diet at the same four dosage levels as D&C Red No. 8, also showed lowered hemoglobin and hematocrit values at all four levels. The spleens of animals at all four dosage levels were enlarged. The livers of animals on the 1 percent and 0.5 percent dosage levels were also enlarged.

The form of D&C Red No. 9 tested was the barium lake extended on a substratum of barium sulfate. FDA found that the damage observed in the test animals could not be attributed to the barium sulfate moiety of the substance tested, because it was generally recognized by competent authorities that barium sulfate could not produce the abnormal effects noted. FDA, therefore, concluded that D&C Red No. 9 produced those effects (25 FR 5584).

C. Provisional Listing of the Color Additives

Shortly after publication of the June 21, 1960, tentative order deleting the 14 coal-tar dyes from the color certification regulations, Congress passed the Color Additive Amendments to the act. Because D&C Red No. 8 and D&C Red No. 9 were still in commercial use when the amendments were enacted, they were included in the provisional lists of color additives, which were published in the **Federal Register** of October 12, 1960 (25 FR 9759). However, the October 12, 1960, order terminated the provisional listing of D&C Red No. 8 and D&C Red No. 9 for unrestricted use in drugs and cosmetics because of the toxic effects observed in the subacute studies. The order then relisted them provisionally with a temporary tolerance. FDA based its decision to set a temporary tolerance for the use of these color additives on the preliminary results of a chronic feeding study of D&C Red No. 9, which was completed in early October 1960. FDA concluded that it would not be inconsistent with the protection of the public health, during the period that these additives were provisionally listed, to allow the continued use of a specified amount of D&C Red No. 8 and D&C Red No. 9 in lipsticks and other ingested products (25 FR 9761). Therefore, the agency retained these color additives on the provisional list, setting a temporary tolerance for each of them of not more than 6 percent pure dye by weight of each lipstick and allowing their use without tolerance restrictions in externally applied drugs and cosmetics. FDA set a closing date of January 11, 1963, for the provisional listing of D&C Red No. 8 and D&C Red No. 9 (25 FR 9759). Subsequently, the temporary tolerance level for D&C Red No. 8 and D&C Red No. 9, and certain other provisionally listed color additives, was lowered from 6 percent to 3 percent, as announced in a final rule published in the **Federal Register** of August 21, 1979 (44 FR 48964). FDA took this action on the basis of available toxicological data from multigeneration reproduction studies, tests of teratological potential, and chronic feeding studies, and also on the basis of suggested levels of use contained in color additive petitions.

Between January 11, 1963, and February 4, 1977, FDA postponed the closing date for the provisional listing of D&C Red No. 8 and D&C Red No. 9 several times. The agency granted these postponements in response to requests for additional time to complete the scientific investigations necessary for listing the color additives under section 706 of the act.

In the **Federal Register** of February 4, 1977 (42 FR 6992), FDA published revised regulations that required new chronic toxicity studies on 31 color additives, including D&C Red No. 8 and D&C Red No. 9, as a condition for continued provisional listing of these additives for ingested uses. FDA required the new chronic studies because the older toxicity studies that the petitioners had submitted were deficient in several respects. FDA described these deficiencies in the **Federal Register** of September 23, 1976 (41 FR 41863):

1. Many of the studies were conducted using groups of animals, i.e., control and those fed the color additive, that are too small to permit conclusions to be drawn on the chronic toxicity or carcinogenic potential of the color. The small number of animals used does not, in and of itself, cause this result, but when considered together with the other deficiencies in this listing, does do so. By and large, the studies used 25 animals in each group; today FDA recommends using at least 50 animals per group.

2. In a number of the studies, the number of animals surviving to a meaningful age was

inadequate to permit conclusions to be drawn today on the chronic toxicity or carcinogenic potential of the color additives tested.

3. In a number of the studies, an insufficient number of animals was reviewed histologically.

4. In a number of the studies, an insufficient number of tissues was examined in those animals selected for pathology.

5. In a number of the studies, lesions or tumors detected under gross examination were not examined microscopically.

In the February 4, 1977, rule, FDA postponed the closing date for the provisional listing of D&C Red No. 8 and D&C Red No. 9 until January 31, 1981, for the completion of the new chronic toxicity studies. In a proposal in the **Federal Register** of November 14, 1980 (45 FR 75226), the agency outlined the reasons for the need to postpone the closing date for 23 provisionally listed color additives under test, including D&C Red No. 8 and D&C Red No. 9, beyond January 31, 1981. In the **Federal Register** of March 27, 1981 (46 FR 18954), the agency established a new closing date of September 30, 1983, for the provisional listing of D&C Red No. 8 and D&C Red No. 9. The closing date has been further extended, and the current closing date is December 5, 1986 (51 FR 35511; October 6, 1986).

D. Color Additive Petition

D&C Red No. 8 and D&C Red No. 9 are the subject of a color additive petition (CAP 5C0028) that was submitted on May 17, 1965, by the Toilet Goods Association Inc. (now the Cosmetic, Toiletry and Fragrance Association (CTFA), 1100 Vermont Ave. NW., Washington, DC 20005). FDA published a notice of filing of the petition in the **Federal Register** of August 6, 1973 (38 FR 21199). The petition, filed under the provisions of section 706 of the act, requested the permanent listing of D&C Red No. 8 and D&C Red No. 9 for use in drugs and cosmetics.

FDA published a notice of an amendment to the petition in the **Federal Register** of March 5, 1976 (41 FR 9584; Docket No. 76C–0044), to include the permanent listing of D&C Red No. 9 for eye-area use. (The petitioner did not request eye-area use for D&C Red No. 8.) FDA notified the petitioner by letters dated May 14, 1976, August 15, 1977, and August 4, 1978, of the need for data to support the use of D&C Red No. 9 in cosmetics intended for use in the area of the eye. In a letter, dated October 24, 1978, FDA advised the petitioner to consider withdrawing that portion of the petition that sought approval of the use of D&C Red No. 9 in cosmetics intended for use in the area of the eye because it appeared that the required data from eye-area studies were not readily available.

The petitioner has not submitted the required data on eye-area use. Therefore, FDA considers that portion of the petition that relates to the listing of D&C Red No. 9 for eye-area use to be withdrawn without prejudice in accordance with the provisions of § 71.4 (21 CFR 71.4). Use of D&C Red No. 9 in the area of the eye has never been covered by the provisional listing of this color additive.

The latest amendments to the petition were made on August 15, 1983, when CTFA submitted requests to change the permitted use levels of D&C Red No. 8 and D&C Red No. 9 from 3.0 percent to "use in cosmetic and drug lip products at not more than 2.0 percent by weight of the finished article." CTFA also withdrew its request for permanent listing of D&C Red No. 8 and D&C Red No. 9 for use in mouthwash, toothpaste, and other ingested drugs. Therefore, the petition currently requests the permanent listing of D&C Red No. 8 and D&C Red No. 9 for use in externally applied drugs and cosmetics, and in ingested drug and cosmetic lip products.

E. Citizen Petition Filed By Public Citizen Health Research Group

On December 17, 1984, the Public Citizen Health Research Group (Public Citizen) petitioned FDA to ban the use of the color additives that remained provisionally listed. On January 22, 1985, Public Citizen filed a complaint in the District Court for the District of Columbia seeking the same relief. Public Citizen alleged that, by continuing to provisionally list the color additives, including D&C Red No. 8 and D&C Red No. 9, FDA had violated the Color Additive Amendments to the act, as well as those provisions of the Administrative Procedure Act (5 U.S.C. 706(1)) that pertain to unreasonable delay of agency action. Public Citizen sought to enjoin FDA from using the provisional list or any other means to allow the marketing of the provisionally listed color additives.

On June 21, 1985, the Commissioner of Food and Drugs sent to Public Citizen a detailed response to the petition. In his response, the Commissioner carefully reviewed and discussed the arguments and information submitted in support of the petition. The Commissioner concluded that the public health would not be endangered by the continued marketing of the color additives while scientific, legal, and policy issues were addressed and, therefore, the Commissioner denied the petition.

On February 13, 1986, Judge Stanley S. Harris granted FDA's motion for summary judgment and dismissed Public Citizen's complaint. *Public Citizen et al. v. DHHS, et al.*, No. 85–1573 (D.D.C. February 13, 1986). Public Citizen has appealed Judge Harris' decision.

F. Lakes of D&C Red No. 8 and D&C Red No. 9

To establish permanent regulations for lakes, FDA proposed the listing of, and specifications for, lakes of permanently listed color additives in the **Federal Register** of May 11, 1965 (30 FR 6490). However, because no certified color additives were permanently listed in 1965, the agency did not issue a final rule on the proposal, and the provisional regulations for lakes under Parts 81 and 82 have remained in effect.

In the **Federal Register** of June 22, 1979 (44 FR 36411), FDA published a notice of intent to propose rules concerning lakes of color additives. This notice discussed the general areas of concern in the development of a new proposal for the regulation of lakes. Although several color additives have been permanently listed under Part 74, the agency did not consider the permanent listing of their lakes to be appropriate because questions about the safety and use of the lakes had arisen. Because of the amount of time that had passed since the 1965 proposal, the agency concluded that a new proposal on lakes should be developed and published. Therefore, FDA withdrew its original proposal (30 FR 6490) and requested information for use in the development of a new proposal for the regulation of lakes.

The agency is deferring the issue of lakes for the reasons discussed in the notice of intent to propose rules published in the **Federal Register** of June 22, 1979 (44 FR 36411). Lakes of certified color additives, including D&C Red No. 8 and D&C Red No. 9, will be addressed fully in a future **Federal Register** publication. However, the agency is requiring that the provisionally listed lakes of D&C Red No. 8 and D&C Red No. 9 be manufactured from certified batches of the color additive. That discussion follows under the section that discusses FDA's decision to permanently list D&C Red No. 8 and D&C Red No. 9.

III. Review of Provisionally Listed Color Additives by a Scientific Review Panel

In the proposal to extend the closing dates for the provisional listing of certain color additives, including D&C Red No. 8 and D&C Red No. 9 (50 FR 26377; June 26, 1985), FDA announced that the Commissioner had established a scientific review panel (panel) of Public Health Service scientists to evaluate

data and report on the risk assessment issues presented by the use of six color additives: D&C Red No. 8, D&C Red No. 9, D&C Red No. 19, D&C Red No. 37, D&C Orange No. 17, and FD&C Red No. 3.

FDA asked the panel to consider several scientific issues that had been raised by FDA scientists about whether a reliable assessment of the risk from the use of these additives could be conducted. Specifically, one issue was whether, for each additive, unidentified contaminants, rather than the principal color component, could be responsible for the observed carcinogenic effects in animal testing, and whether any such unknown impurities or components may be absorbed through the skin to a greater or lesser extent than other parts of the additive. The panel was charged with examining this impurities issue and further with addressing the issue of whether a risk assessment calculation could be made from the available data, and, if so, whether the risk assessments before the agency were properly calculated.

In the **Federal Register** of March 6, 1986 (51 FR 7856), FDA announced the availability of the final report of the Panel. The report is entitled "Report of the Color Additive Scientific Review Panel, September 1985, Docket No. 86N–0039." The report is incorporated by reference and a copy of the report is available to the public for review at the Dockets Management Branch (address above). Requests for copies of the report should be identified with Docket No. 86N–0039.

In the report, the panel concluded that the risk assessments submitted by the petitioner for several of the color additives, including D&C Red No. 8 and D&C Red No. 9, are consistent with current acceptable usages in risk assessment. The panel also concluded that legitimate issues with regard to impurities had been raised but could be addressed by making reasonable and appropriate assumptions about the possible influence that such impurities might have. The report of the panel was also submitted to peer review and subsequently published in *Risk Analysis*, 6:2:117–154, 1986, thereby broadly providing the risk analysis assessment to the scientific community. These findings will be discussed in greater detail below.

IV. Overview of the Final Rule

FDA has evaluated all the available evidence regarding the safety of D&C Red No. 8 and D&C Red No. 9. Based upon this evaluation, FDA finds that the use of D&C Red No. 8 and D&C Red No. 9 in externally applied drugs and cosmetics and certain ingested drug and cosmetic lip products is safe. Although these uses involve, based on conservative statistical analysis, a theoretical carcinogenic risk, the agency finds that this risk is so trivial as to be effectively no risk at all. For these reasons, the agency has decided to permanently list these uses of D&C Red No. 8 and D&C Red No. 9.

The remainder of this document describes the information and advice relied upon by the agency in reaching its conclusion as to the safety of D&C Red No. 8 and D&C Red No. 9 as color additives for externally applied drugs and cosmetics and ingested drug and cosmetic lip products. First, the agency evaluates the available data resulting from toxicology testing of D&C Red No. 8 and D&C Red No. 9. In the next section, the agency discusses CTFA's safety evaluation of the same data. Next the agency deals with CTFA's arguments and questions concerning the relevance of the toxicology tests to the determination of the safety of the uses of D&C Red No. 8 and D&C Red No. 9. In the section following, FDA discusses CTFA's assessment of the extent of human exposure resulting from the uses of D&C Red No. 8 and D&C Red No. 9.

In the remaining sections, FDA discusses CTFA's low dose carcinogenic risk assessment approach, the report of the panel, and the panel's conclusions regarding the propriety of relying upon the available data to conduct risk assessments for use by a government regulatory agency. The final section discusses the agency's reliance on the *de minimis* doctrine to reach the conclusion that D&C Red No. 8 and D&C Red No. 9 are safe for use in externally applied drugs and cosmetics and in ingested drug and cosmetic lip products and that the proscriptions of the Delaney Clause should not be invoked in this matter.

V. Toxicology Testing of the Color Additives

A. Chronic Feeding Studies

Since 1959, three sets of major chronic feeding studies on D&C Red No. 9 in rats and mice have been completed at three separate facilities. D&C Red No. 8 has not been tested in a chronic feeding study, but FDA has concluded that, for the purpose of assessing safety, D&C Red No. 8 and D&C Red No. 9 are toxicologically equivalent. The petitioner has agreed with this conclusion. Therefore, action on both of these color additives can be taken on the basis of the results of chronic studies on D&C Red No. 9.

1. *FDA study.* In August 1958, FDA initiated a long-term chronic study on D&C Red No. 9 in the Osborne-Mendel rat. The study, conducted in the agency's laboratories, was designed to determine whether the coal-tar dyes were harmless and suitable for use and, therefore, eligible for continued batch certification. In this study, the color additive was fed to rats in their diet at four dosage levels: 0.01, 0.05, 0.25, and 1.0 percent. Twenty-five male and twenty-five female rats were fed at each dosage level, with twenty-five each males and females receiving no color additive as controls.

The feeding sample (Lot No. G4516) was obtained from H. Kohnstamm & Co., Inc., Brooklyn, NY. FDA's analysis of the sample indicated that it was 86 percent pure dye. The study was completed in early October 1960 and published in *Toxicology and Applied Pharmacology*, 4:200–205, 1962. Reported histopathologic changes attributed to D&C Red No. 9 feeding consisted of moderate splenomegaly at 1 percent and slight splenomegaly at 0.25 percent, and slight bone marrow hyperplasia at both levels. No splenic neoplasms were reported in this study.

2. *National Cancer Institute (NCI) National Toxicology Program (NTP) studies.* The NTP Technical Report No. 225, submitted to FDA in June 1982, presents the results of the carcinogenesis bioassay of D&C Red No. 9 conducted for the Bioassay Program, NCI/NTP. This bioassay was one of a series of experiments designed to determine whether selected chemicals have the capacity to produce cancer in animals. The D&C Red No. 9 bioassay was conducted at Battelle Columbus Laboratories, Columbus, OH, under a subcontract to Tracor Jitco, Inc., Rockville, MD, prime contractor for the NCI Carcinogenesis Testing Program. The test sample of D&C Red No. 9 (Lot No. Z–8054) was obtained from H. Kohnstamm & Co., Inc., Brooklyn, NY. Analysis of the sample by FDA's Color Additives Certification Branch indicated that it contained 87.0 percent pure dye. The studies with rats and mice were initiated March 10, 1977.

(a) *Rat study.* Fifty male and fifty female Fischer 344 (F344) rats were administered D&C Red No. 9 in diets at concentrations of 0.1 percent or 0.3 percent for approximately 2 years. Male and female rats of the same strain, age range, source, and shipment served as controls for D&C Red No. 9 and for feeding studies of two other chemicals (C.I. Disperse Yellow No. 3 And C.I. Solvent Yellow No. 14). The rats for all

three studies were housed in the same animal room.

NCI stated in its report that no effects on survival, body weights, or food consumption were observed that were associated with treatment with D&C Red No. 9. However, other toxic effects were noted. An increased incidence of male rats with splenic sarcoma occurred in the high-dose group when compared to the control group (26/48 (54 percent) versus 0/50 (0 percent); $p < 0.001$). The spleen of male and female rats in the high-dose group was also the site of other changes. In spleens of male rats, severe congestion, focal or diffuse fibrosis of an unusual type, fatty metamorphosis, and capsular fibrosis and hyperplasia were present in nearly all of the high-dose animals. In spleens of female rats there were similar changes but without fatty metamorphosis in the high-dose animals. Some changes were also observed in the spleens of some male and female control rats (Weinberger et al., *Journal of the National Cancer Institute*, 75:4:681, 1985).

The incidence of rats with neoplastic nodules in their livers was reportedly increased in both males and females in the high-dose group but in only males in the low-dose group. No increased incidence of rats with hepatocellular carcinomas was evident.

(b) *Mouse study.* Fifty male and fifty female mice of the B6C3F1 strain received D&C Red No. 9 in their diets at concentrations of 0.1 percent or 0.2 percent for about 2 years. Untreated male and female mice of the same strain and age group and from the same source and shipment served as controls for D&C Red No. 9 and for mice on feeding studies of two other chemicals (C.I. Disperse Yellow 3 and C.I. Solvent Yellow 14). Mice for all three studies were housed in the same animal room.

According to the NCI report, no effects on survival, body weight, or food consumption were associated with consumption of D&C Red No. 9 except that the mean body weights of treated females were slightly lower than controls during the second year of the study. These decreases were less than 10 percent in all cases except in one instance at the high dose (week 87, 11 percent). Although the incidence of male mice with hepatocellular carcinomas at the 0.2 percent dose level was higher than in the concurrent control animals, the high-dose incidence was not greater than the mean historical incidence for the performing laboratory (11/50 versus 65/297; 22 percent for both). There were no other lesions that were increased in the treated mice compared to control mice.

3. *CTFA studies.* As required by the revised provisional listing regulations of February 4, 1977, CTFA initiated new chronic studies with rats and mice representing current state-of-the-art toxicological testing. The studies were conducted for CTFA by Litton Bionetics, Inc., Kensington, MD. The test sample of D&C Red No. 9 (Lot No. AA3779) was obtained from Sun Chemical Corp. on February 28, 1978. FDA's analysis of the sample indicated that it contained 76 percent pure dye.

During the course of the CTFA studies, FDA investigators conducted three establishment inspections of Litton Bionetics, Inc., under the good laboratory practice (GLP) program (December 12, 1977, to January 26, 1978; January 31 to April 16, 1979; and June 23 to 27, 1980). The investigators noted numerous deviations from the proposed GLP regulations. FDA informed CTFA of the GLP deviations in letters dated July 19, 1978, and May 21, 1980.

Subsequently, Litton corrected most of the GLP deviations noted during the three inspections, and FDA concluded that the validity of the results from the D&C Red No. 9 studies was not compromised. (GLP Review Committee Report, September 26, 1980.)

(a) *Rat studies.* Male and female Charles River CD Sprague-Dawley rats were assigned to each of three groups (F_0) receiving 0.01, 0.02, or 0.05 percent D&C Red No. 9 in the diet, or to one of two control groups, and were mated to produce offspring (F_1) that were assigned to these same treatment groups throughout their lifetime. Each F_1 treatment group and control group contained 70 males and 70 females.

After this chronic feeding study was begun, FDA's scientists concluded, on the basis of available data, that the 0.05 percent dosage level was too low. The agency, therefore, asked the petitioner to conduct an additional chronic feeding study in rats using a 1.0 percent dosage level. This second rat study included two groups of rats: a control group given a standard control diet and a treated group that received 1.0 percent of D&C Red No. 9 in the diet. The second study was run under the same experimental design as the first study. Both studies were terminated after 30 months.

No treatment-related effects were reported on survival, body weight, or food consumption in either parental animals or offspring that were fed diets that contained concentrations of D&C Red No. 9 that were as high as 0.05 percent. Similarly, the survival and food consumption of treated rats fed diets that were 1.0 percent D&C Red No. 9 were not affected. However, at the 1.0 percent dose, the weights of male and female pups in the treated groups were decreased at weaning (day 21 post partum), and rats of both sexes manifested lower body weights throughout most of the chronic phase. The weight differences were less than 10 percent, however, and were judged by the performing laboratory to be unrelated to treatment in the chronic phase. Thus, the higher dosage did not adversely affect survival and had a marginal effect, if any, on body weight.

There were no reported treatment-related changes in clinical chemistry or hematology in either the male or female rats treated with diets containing up to 0.05 percent color additive. However, signs of anemia were evident in both males and females whose diets contained 1.0 percent color additive. Organ weight differences included increased spleen weights in female rats in the 0.05 percent dose group sacrificed at 1 year. Spleen weights were also increased at 1 year and at termination in both males and females fed D&C Red No. 9 at the 1.0 percent level. Other weight changes in the 1.0 percent group included increased heart weights in males and females, increased kidney weights in females, and increased testicular weights.

In male rats whose diet consisted of 1.0 percent D&C Red No. 9, there were several notable treatment-related splenic lesions, including splenic congestion, splenic fibrosis, mesothelial hyperplasia, mesothelial cysts, hemosiderosis, and splenic hematopoiesis. These unusual splenic lesions were associated with the occurrence of splenic sarcomas in four of the male rats. In addition, a splenic sarcoma was also observed in one female rat fed at the 1.0 percent dose level. In the lower dose experiment, fibrosis was not described in spleens of any of the treated rats.

(b) *Mouse studies.* Sixty male and sixty female Charles River CD–1 mice were randomly assigned to each of three treatment groups receiving D&C Red No. 9 in the diet at concentrations of 0.005, 0.025, or 0.10 percent, or to one of two control groups. In addition to these treatment groups, a group of Charles River CD–1 mice was administered a higher concentration of 0.20 percent of this color additive under the same experimental design. This group together with a control group constituted a separate study. The first study was terminated at 24 months, and the second study was terminated at 22 months.

There were no reported differences in survival, growth (body weight gain), or food consumption among the treated and control groups in either study.

Female mice whose diet consisted of 0.10 percent D&C Red No. 9 exhibited anemia as indicated by decreased numbers of red blood cells, increased numbers of reticulocytes, decreased hemoglobin content, and decreased hematocrits. However, in the second study, at a dose level twice that of the first study, no anemia was evident (0.2 percent versus 0.1 percent in the diet). No other differences were observed in any other hematological or clinical chemical values that could be attributed to exposure to D&C Red No. 9.

Except for decreased mean kidney weights of male mice treated with 0.2 percent D&C Red No. 9, organ mean weights were similar in treated and control mice. There were no significant compound-related effects in either male or female mice.

B. The Skin Penetration Study

CTFA sponsored an in vitro percutaneous absorption study on D&C Red No. 9 in an attempt to determine whether this substance penetrates excised skin under conditions simulating human use. Information on skin penetration is relevant in determining whether ingestion study results can be used in evaluating the safety of the use of the color additive in externally applied drugs and cosmetics. Consequently, FDA agreed to review the data from the skin penetration study before reaching a final conclusion on the safety of D&C Red No. 8 and D&C Red No. 9.

The study was conducted by Dr. T. Franz at the University of Washington School of Medicine. The D&C Red No. 9 sample, radiolabeled with ^{14}C on the benzene ring, was obtained from Amersham Corp. of America, Arlington Heights, IL. The petitioner reported that the composition of the sample (Batch No. N33645), as determined by the high performance liquid chromatography, was similar to that of the two different lots used in the CTFA and NCI/NTP chronic feeding studies, with the amount of the major isomer (D&C Red No. 9) varying less than 2 percent in the three lot samples. The in vitro skin test model consisted of a 1 or 2.5 square centimeter section of human skin mounted in a diffusion cell. The dermal surface of the skin was placed in isotonic saline at pH 7.4 and 37 °C. The bathing solution (the receptor phase) was removed and sampled at regular intervals. D&C Red No. 9 was applied in various concentrations and vehicles (simulating, to some degree, the composition of commercial products) in volumes of 5 or 25 microliters, or as 25 milligrams talc. The radioactively labeled D&C Red No. 9 was left in situ for periods of 3 to 7 days, and the absorption of the dye through the skin into the receptor phase was measured with a scintillation spectrometer until a steady state rate was reached. Where a steady state was not reached, the maximum rate was used, typically measured at the end of the third day.

The skin sections were obtained from the abdominal skin of deceased hospital patients within 24 hours of their death, and used either immediately or refrigerated for no more than 20 hours. Before mounting in the diffusion cells, the subcutaneous fat tissue and approximately 50 percent of the dermis were removed by shaving with a scalpel. In a number of cases, the epidermis was also tested (separately from the dermis), in order to investigate the effects of differential retention on tissue permeability.

In interpreting the test results, it should be realized that the model used cadaver skin. Because any postmortem tissue disintegrates with time, it is likely that the skin's integrity as a barrier will be affected. The longer the time since death, the more permeable the skin becomes. Unfortunately, no quantitative data are available on the time dependency of postmortem permeability of human skin. Another aspect of the skin model is that artificial canals between the skin surface and the receptor phase have been created by cutting through the sweat and hair ducts. The effect of this artifact has not yet been quantified but will result in raising the observed absorption rate.

Finally, even if the skin model would perfectly simulate in vivo physiology, a serious shortcoming is that the amount of test substance applied to the diffusion cell did not account for the natural loss of material occurring in practice, e.g., by wiping off excessively applied cosmetics, wearing off or rubbing off, and cleaning. Estimates of this loss of material, i.e., that will not be available for absorption, can be made but are necessarily crude in the absence of adequate test data.

The daily percutaneous absorption rate for D&C Red No. 9 reported by the testing laboratory ranged from 0.006 percent to 0.06 percent.

C. Other Tests

1. *Metabolism study.* A study on the absorption, distribution, metabolism, and excretion of D&C Red No. 9 was conducted by A.D. Little, Inc., Cambridge, MA 02140, and reported to CTFA. D&C Red No. 9 was reported in the NCI/NTP study to cause splenic fibrosarcomas in male Fischer 344 rats. Because the carcinogenic response reported for D&C Red No. 9 in the NCI/NTP study is similar to that for aniline hydrochloride, the A.D. Little study was undertaken to determine whether D&C Red No. 9 causes damage to the spleen in the same manner. According to the report, there is evidence (Ref. 1) that aniline binds to and damages erythrocytes in the blood which are then scavenged by the spleen, resulting in splenic injury. For this reason, two preparations of radiolabeled D&C Red No. 9, one labeled with ^{14}C in the benzene ring and the other labeled with ^{14}C naphthalenol ring, were administered to male Fischer 344 rats at 3,000 parts per million (ppm) in the diet for 24 hours.

The data from this study indicate that there are similarities between the disposition of D&C Red No. 9 and aniline hydrochloride in the rat. The study showed that naphthol-derived radioactivity of D&C Red No. 9 is retained by erythrocytes in the blood and thus has the potential to accumulate in the spleen and be the probable mechanism of splenic injury. FDA believes that the test results have not been adequately explored because there is not a total accounting of radioactivity after administration in the rat diet, and because the report does not indicate whether the composition of the radiolabeled test material was qualitatively or quantitatively representative of the composition of commercial batches of the color additive.

2. *Mutagenicity tests.* CTFA cited two papers that conclude that D&C Red No. 9 is not genotoxic in the Ames Salmonella test (Refs. 2 and 3). No other mutagenicity data were submitted or are available in the published literature.

The Ames Salmonella plate test, when conducted appropriately, is recognized as a useful screen to determine a chemical's potential carcinogenicity and may provide information on a carcinogenic mechanism. However, a negative Ames test by itself is not sufficient to characterize a chemical's complete mutagenic response. (Office of Science and Technology Policy (OSTP) Principle No. 7; 50 FR 10372, March 14, 1985.) In addition, it is not certain that even a battery of current genotoxicity tests would be sufficient to detect all genotoxic activity and thus to rule out entirely a genetic mechanism of action. (OSTP Principle No. 6; 49 FR 21518.) Finally, there is the possibility that the Ames Salmonella plate tests performed on D&C Red No. 9 were inadequate. Certain dyes of the azo class fail to act as mutagens in the Ames test unless a reducing agent is added in the course of the test, because it is the reduction

products of those dyes that interact with the deoxyribonucleic acid (Ref. 4). The Ames tests of D&C Red No. 9 did not include reducing agents.

VI. Evaluation of Test Results

A. Significance of Results of the Feeding Studies

A pattern of unusual splenic lesions emerges when all the chronic feeding studies are considered together. The splenic lesions included fatty metamorphosis, splenic fibrosis, capsular fibrosis, and hyperplasia, as well as severe congestion of the splenic pulp with or without hemorrhages or infarcts. In the NCI/NTP and CTFA studies, the splenic lesions were associated with the occurrence of fibrosarcomas, which are a rare type of tumor in the spleen (Ref. 15).

Based on results observed in its chronic study on D&C Red No. 9 in rats, FDA concluded that there were no gross or microscopic pathologic changes attributable to the color additive at the 0.05 percent and 0.01 percent level and that D&C Red No. 9 was not carcinogenic, when tested in the Osborne-Mendel rat, at the highest (1.0 percent) dose level. However, splenic lesions in rats at the 1.0 percent dose level included moderate splenic enlargement, infarcts, and scars. (Fitzhugh et al., *Toxicology and Applied Pharmacology*, 4:200, 1962.)

Based on the bioassays conducted under the NTP program, NCI concluded: "Under the conditions of this bioassay, D&C Red No. 9 was carcinogenic for male F344 rats causing an increased incidence of sarcomas of the spleen and a dose-related increase in neoplastic nodules of the liver. D&C Red No. 9 was not considered to be carcinogenic to female F344 rats, although the increased incidence of neoplastic nodules of the liver may have been associated with administration of the test chemical. D&C Red No. 9 was not carcinogenic for B6C3F1 mice of either sex." (NTP Technical Report No. 225, p. 59, May 1982.) Based on their review of the microslides of the liver, FDA's scientists reduced the number of rats diagnosed as having neoplastic nodules. Consequently, FDA concluded that there was no evidence of a significant neoplastic response of the rat liver to D&C Red No. 9.

CTFA concluded, as stated in its submissions of July 8, 1982, and August 15, 1983, that although the bioassays conducted for NCI/NTP, in the Fischer 344 rat, and CTFA, in the Charles River CD Sprague-Dawley rat, resulted in three toxicologic phenomena (splenic tumors, liver nodules, and adrenal tumors), "none of these observations warrants a determination that D&C Red No. 9 is a primary (or direct) carcinogen or presents a significant risk of cancer to humans." CTFA argued that the NCI/NTP study did not demonstrate D&C Red No. 9 to be a carcinogen because the study had a substantial number of flaws. CTFA further contended that the number of rats with splenic neoplasms observed in its study was not statistically different from the control incidence and, therefore, cannot be considered as evidence for carcinogenesis.

Although the agency agrees that the increase in the number of rats with splenic neoplasms in the CTFA study is not large, FDA, for the following reasons, rejects CTFA's claim that this study cannot be used as evidence that D&C Red No. 9 is a carcinogen:

(a) The chronic toxicity/carcinogenicity studies of D&C Red No. 9 (NCI/NTP, CTFA, and FDA studies) have demonstrated a common pattern of unusual splenic lesions only in the treatment groups. These lesions include fatty metamorphosis, focal or diffuse splenic fibrosis, unusually severe forms of splenic congestion with or without hemorrhages or infarcts, capsular fibrosis, and capsular hyperplasia. Similar splenic lesions have been described for aniline and several other chemicals that are aromatic amines and aromatic azo compounds. These chemicals include *para*-chloroaniline, azobenzene, *o*-toluidine, and 4,4'-sulfonyldianiline (dapsone). All of these compounds have induced a significant number of splenic sarcomas in F344 rats.

(b) Rats of differing strains appear to vary in their sensitivity to aniline-related compounds and in the strength of their splenic carcinogenic response to these compounds. The Fischer 344 rat strain appears to be a particularly sensitive strain. Although Sprague-Dawley rats appear to be less sensitive to these substances than the F344 rats, in the CTFA study they still showed the unusual effects described above.

(c) The evaluation of a bioassay is not a simple or routine exercise in that one cannot decide whether or not a chemical is a potential carcinogen simply by an examination of a statistical probability value. All biological and toxicological evidence needs to be included in the evaluation of any bioassay (Refs. 5 and 6). The pattern of changes observed in the spleens of treated animals in the CTFA studies was very unusual and not observed in the concurrent control animals or in historical control animals. Although the number of neoplasms observed in the treated animals in the CTFA studies was small, the unusual nature of these neoplasms, combined with the finding of carcinogenicity in the NTP study, provide supportive evidence for the agency's conclusion that exposure to D&C Red No. 9 is associated with the occurrence of splenic cancer.

B. Significance of Results of the Skin Penetration Study

FDA finds that the study was performed, in general, in a satisfactory manner. The test data clearly showed that radiolabeled material, from D&C Red No. 9 passes through the skin in small, but measurable amounts. Therefore, the agency concluded that some systemic exposure to the color additive may occur from the use of externally applied drugs and cosmetics containing D&C Red No. 9, and that the ingestion studies that show this color additive to be a carcinogen are appropriate for evaluating the safety of the externally applied uses of D&C Red No. 9 (Ref. 25).

CTFA has argued, however, that it is possible, using the data from the bioassays and the skin penetration studies, to assess the carcinogenic risks from the external use of the color additive and to use the results of that assessment in deciding on the safety of the external uses of the additive. CTFA has also argued that such an assessment demonstrates that D&C Red No. 9 is safe when used in externally applied products.

The carcinogenic risk from the use of an externally applied carcinogenic color additive is determined by (1) the amount of color additive applied to the skin and the frequency of application, (2) the concentration of carcinogenic agents in the color additives, (3) the potency of the carcinogenic agents, and (4) the fraction of the applied carcinogenic agents that penetrates the skin.

The risk estimates submitted by CTFA are based on the assumptions (1) that the principal color component is the carcinogenic agent, (2) that the radiolabeled material penetrating skin is representative of the whole color additive, and (3) that 100 percent of the carcinogenic agent is absorbed from the alimentary tract into the blood stream in the animal feeding studies.

FDA's scientists questioned CTFA's assumptions because an argument could be made that contaminants are responsible for the carcinogenic response. Color additives are not pure substances and normally contain intermediates, subsidiary colors, and other contaminants from intermediates and from side reactions. Although the carcinogenicity of D&C Red No. 9 was revealed by an animal bioassay, the

bioassay could not establish whether the carcinogenic response was produced by the principal color component or by one or more of its contaminants. It is theoretically possible that one of the contaminants could be responsible for the production of the carcinogenic response.

CTFA's assumption that the radiolabeled material was representative of the whole color additives (and that, therefore, there is no need to be further concerned with possible impurities) could not be substantiated. CTFA measured only the radioactivity of the substance that penetrated the skin and could not identify the components that actually penetrated the skin.

Moreover, FDA's scientists could not determine from the data submitted by CTFA which constituents of the color additive penetrated skin, or whether impurities in the color additive would penetrate skin in the same manner as the primary color that was tested. It is possible (1) that the actual carcinogen could be a contaminant(s) that penetrated the skin but were unlabeled and therefore undetected; (2) that virtually none of the principal color component penetrated the skin, and that the radioactive material found could be due to carcinogenic contaminants; and (3) that the degree of skin penetration by the actual carcinogenic agent is greater than that estimated by CTFA based on its assumption that the principal color component of D&C Red No. 9 is the carcinogen.

Another assumption by CTFA, that 100 percent of the carcinogenic agent is absorbed from the gastrointestinal tract, was questioned by FDA's scientists because few chemicals are ever completely absorbed. There are many reasons for poor or limited absorption of chemical substances from the gastrointestinal tract, including (1) the instability of the chemical in acidic fluids, (2) enzymatic breakdown by digestive juices, (3) destruction by intestinal microorganisms, and (4) lack of lipid solubility (Ref. 26).

FDA asked the panel to review CTFA's assumptions and the agency's concerns about exposure to impurities in D&C Red No. 9. The panel revised several of CTFA's assumptions and concluded that the agency's concerns regarding impurities, although important, could be addressed by making reasonable and appropriate assumptions about the possible effects impurities might have. The results of the panel's review are discussed in greater detail in a later section of this final rule.

VII. CTFA's Safety Arguments

On July 8, 1982, and August 15, 1983, CTFA submitted to FDA its reviews and analyses of the scientific data on D&C Red No. 9. In these submissions, CTFA raised various points on the conduct of its study and the NTP study, the validity of the data derived from these studies, and the possible regulatory decisions that could be based on these data. The agency has considered these arguments and has determined, for the reasons discussed below, that these studies are relevant to the uses of these color additives. The main points of the CTFA presentation and FDA's response to each point are summarized below.

1. CTFA contends that the dosage used in the NCI/NTP study exceeded the maximum tolerated dose (MTD). It points out that overt toxicity was produced at all dose levels, i.e., up to 3,000 ppm in rats and at 1,250 ppm and 2,500 ppm in mice.

The NCI guidelines for carcinogenic bioassays do not require that the MTD produce no overt toxicity (Ref. 7). They define the MTD as "the highest dose that can be given that would not alter the animal's normal lifespan from effects other than cancer." One expert has written, "It is generally conceded that the maximum dose can produce slight toxic effects, such as depression of weight gain, so long as it is compatible with prolonged survival and permits valid interpretation of the experimental results." (Ref. 8.)

In the NCI/NTP study, mean body weights of dosed and control animals were comparable, and no significant differences in mortality were observed between treated and control rats. In fact, NCI, in its report on the feeding studies with D&C Red No. 9, stated: "With the possible exception of female mice, all other dosed groups of rats or mice might have tolerated higher doses, thus a clear maximum tolerated dose may not have been utilized in this study." (NTP Technical Report 225, p. vii, May 1982.) Dr. Hitchcock, the principal reviewer of the study, pointed out that the dose used in the chronic bioassays on D&C Red No. 9 was probably below the MTD, because the lesions observed in the subchronic, dose-setting studies were not seen in the chronic studies. (NTP Technical Report 225, p. xiii, May 1982.) For these reasons, FDA finds no merit in CTFA's arguments on this issue.

2. CTFA contends that in the NCI/NTP study there was improper caging of animals. It argues that solid bottoms on cages encouraged coprophagy, and therefore that animals actually received higher doses of D&C Red No. 9 and its metabolites than were called for by the protocols. CTFA also contends that coprophagy may also have resulted in exposure to new metabolites produced by gut flora.

FDA responds that while CTFA's contention that coprophagy occurred is possibly correct, CTFA has not offered any evidence that any potentially increased exposure via coprophagy compromised the animals in the NCI/NTP study. In fact, in CTFA's own study in which wire cages were used, the same rare tumors were found. In light of the consistent results in the two studies with two different strains at different dose levels, FDA concludes that the question of coprophagy is irrelevant.

CTFA's contention that coprophagy exposed the Fischer rats to additional or different metabolites is also unsubstantiated. CTFA has presented no data on the metabolism of D&C Red No. 9 in rats or humans that would substantiate its contention that metabolites of D&C Red No. 9 were present in rat feces, or that human metabolism of D&C Red No. 9 is different from that of rats. Without definitive metabolism data, the agency cannot conclude that animals in the chronic feeding study of D&C Red No. 9 were exposed to different or higher levels of metabolites than they would have been if coprophagy had been prevented.[1]

3. CTFA contends that the studies were flawed because of the presence of other carcinogens in the rooms in which the animals were housed. The rooms were also used to house animals being fed two other chemicals (C.I. Disperse Yellow 3 and C.I. Solvent Yellow 14) that were also found to be carcinogenic.

No evidence from the NCI/NTP report supports CTFA's claim that the animals in the D&C Red No. 9 assay were affected by the other substances being tested in the same room. The possibility of some cross effect was raised by Dr. Hitchcock (NTP Technical Report No. 225, p. xiii, May 1982), but it did not affect the NTP review panel's decision that D&C Red No. 9 was carcinogenic to male Fischer 344 rats. In addition, no splenic neoplasms were observed in the animals fed the other test compounds nor in controls, so there is no reason to believe that the presence of animals fed other carcinogens in the same room as

[1] The Color Additive Scientific Review Panel (discussed elsewhere in this document) also reviewed the NCI study. The panel noted the possibility that fecal metabolites, including some aromatic amines that are established or suspected carcinogens, were ingested, but concluded that the amount of coprophagy was likely to be small as animals had access to feed and water at all times.

the animals in this bioassay compromised the outcome of the study.

4. CTFA contends that there were GLP violations in the NCI/NTP study. Specifically, CTFA cites the lack of documentation regarding storage, handling, mixing, and disposition of the test material; lack of individual animal body weights; inconsistencies between cage weights and numbers of animals surviving in the cage; discrepancies in observations of "lumps;" inconsistencies between individual animal records and daily clinical observation records; failure to record daily clinical observations for the first 4 weeks of the study; and failure to try to isolate and sacrifice moribund animals.

None of the alleged GLP violations cited is sufficient to invalidate the study or to affect its outcome materially. These departures from GLP would not have affected the incidence of tumors found in the study. Thus, they do not diminish the significance of the positive response seen in the study. NTP's Board of Scientific Counselors accepted the study and approved the study report unanimously. FDA believes that the NTP Board acted appropriately in doing so. Therefore, FDA finds that this study provides a valid basis upon which to judge the carcinogenicity of D&C Red No. 9.

5. CTFA contends that the NCI/NTP study did not demonstrate that D&C Red No. 9 is a carcinogen because NCI bioassays are intended only to be research and screening studies, not to be definitive tests for carcinogenicity in animals and in humans.

CTFA's contention is fully responded to by NCI's report on the bioassay of D&C Red No. 9: "This is one in a series of experiments designed to determine whether selected chemicals produce cancer in animals. Chemicals selected for testing in the NTP carcinogenesis bioassay program are chosen primarily on the bases of human exposure, level of production, and chemical structure. Selection per se is not an indicator of a chemical's carcinogenic potential. Negative results, in which the test animals do not have a greater incidence of cancer than control animals, do not necessarily mean that a test chemical is not a carcinogen, inasmuch as the experiments are conducted under a limited set of conditions. Positive results demonstrate that a test chemical is carcinogenic for animals under the conditions of the test and indicate that exposure to the chemical is a potential hazard to humans. The determination of the risk to humans from chemicals found to be carcinogenic in animals requires a wider analysis which extends beyond the purview of this study." (NTP Technical Report No. 225, p. ii, May 1982.)

6. CTFA maintains that D&C Red No. 9 produces cancer by a "secondary" mechanism, and, therefore, that "* * * a threshold dose-response relationship exists, as it does for other forms of toxicity involving action at the cellular or organ level." CTFA contends that, in treating D&C Red No. 9 as a secondary carcinogen, there is a level of administration, a threshold, at which it does not induce cancer when administered at or below that threshold. (CTFA Submission, Final Review and Analysis of Scientific Studies and Risk Assessments Supporting the Safety of D&C Red No. 9 (CTFA Submission) August 15, 1983, p. 25.)[2]

The agency rejects CTFA's argument that there is sound scientific evidence that D&C Red No. 9 is a secondary carcinogen.

Although the hypothesis for a "secondary" mechanism of carcinogenesis for D&C Red No. 9 has some plausibility, FDA finds that no experimental data were submitted in the CTFA submission to support this hypothesis and because of this, no serious analysis can be made of this issue.

While effects of D&C Red No. 9 on the spleen are observed, FDA believes CTFA's claims about the secondary relationship of these effects to the splenic lesions are speculative and are based upon circumstantial evidence rather than direct experimental evidence. Moreover, FDA believes that the findings of splenomegaly and other splenic changes are evidence of toxic injury to the spleen and not necessarily evidence which indicates a secondary carcinogenic response. FDA concludes, therefore, that CTFA has failed to carry its burden of proving its claim that D&C Red No. 9 acts by a secondary mechanism.

7. CTFA contends that the splenic tumors observed in both the NCI/NTP study and the CTFA study were not caused by D&C Red No. 9 but rather by metabolites which should be considered under FDA's constituents policy and not the Delaney Clause (CTFA Submission, p. 86).

CTFA misinterprets the definition of "constituent" used by FDA in regulating several color additives, including D&C Green No. 5 (47 FR 24285; June 4, 1982), under the carcinogenic impurities policy. Metabolites do not meet FDA' s definition of a "constituent." Constituents are chemicals present in the food additive or color additive in minor amounts. They may be nonfunctional components of the additive or unavoidable impurities. Metabolites, however, are chemicals that are produced by processes in the body, either by the body's own cells (tissues) or by bacteria within the body such as those in the intestinal tract of the organism ingesting the additive.

In addition, the carcinogenic impurities policy, as described in the final order listing D&C Green No. 6 for external drug and cosmetic use (47 FR 14138; April 2, 1982) and upheld in *Scott v. FDA*, 728 F.2d 322 (6th Cir. 1984), applies only when the color additive as a whole has not been shown to induce cancer in appropriate animal studies, making the Delaney Clause inapplicable. In the case of D&C Red No. 9, the color additive as a whole has been found to induce cancer in appropriate animal tests as discussed above, and thus this policy does not apply to it.

VIII. CTFA's Assessment of Exposure to D&C Red No. 8 and D&C Red No. 9

In the report submitted to FDA on August 15, 1983, CTFA outlined an approach to estimate human exposure to D&C Red No. 9. CTFA estimated the cumulative amount of D&C Red No. 9 absorbed by an individual based upon the products in which the color additive is used, the amount of each product used per application, the frequency of use of each product, the concentration of the color additive in each product, and the level of dermal absorption.

CTFA reported that by using both a prospective and a retrospective approach, it had determined the exposure to D&C Red No. 9 through external cosmetic and drug product use. Data on the frequency of use of various external cosmetic and drug products come from two sources. The first is a 1-week prospective survey of female

[2] CTFA subsequently submitted several letters to FDA and to the Department of Health and Human Services that relate to the use of D&C Red No. 8 and D&C Red No. 9, as well as to the use of certain other provisionally listed color additives. Among these submissions were letters dated January 3, 1984; May 1, 1984; July 3, 1984; August 31, 1984; and October 22, 1984. FDA has carefully considered these submissions and concludes that it fully responds in this preamble to all relevant matters that these submissions raise. One issue that CTFA has raised that FDA does not address is the so-called "inconstant mixtures" issue. FDA is not addressing this issue because it is not relevant to whether the uses of D&C Red No. 8 and D&C Red No. 9 have been shown to be safe. As former Assistant Secretary of Health Edward Brandt explained to CTFA in a letter dated August 9, 1984, the "inconstant mixtures" issue relates to the setting of specifications for the level of pure dye, intermediates, and other impurities permitted in color additives. In this final rule, FDA has set specifications consistent with the safe use of the color additives.

FDA has included the submissions listed in this footnote in the record for this proceeding.

participants. The participants recorded the number of times in a week they used a range of cosmetic products including face powders and rouges, hair cosmetics, nail products, bathwater products, wash-off products, and various other externally applied cosmetic products. For products used less often than once per week, they were asked to report how often they generally used such products. The second source of data on frequency of use is from a retrospective survey of 1,129 customers of a chain of stores run by a major cosmetic manufacturer. Because the individuals in this survey were customers of specialty cosmetic stores they are likely to have above average usage patterns. For both sets of data, for each product, CTFA listed an average and an upper 90th percentile value of frequency of usage.

Data on the amount of each product per application were provided from the responses to a survey of CTFA member companies to obtain the results of existing studies on this subject. The values are the averages for each product as reported in CTFA's survey.

The August 15, 1983, report presented data derived from the skin absorption study described and discussed in Sections V.B. and VI.B. of this document on the proportion of the D&C Red No. 9 contained in each product that is likely to be absorbed.

CTFA believes that the amount of D&C Red No. 9 applied per square centimeter in these experiments was similar to or greater than the corresponding amount that would be applied in externally applied cosmetics and drugs. Hence, it concluded that the experimental permeability data are likely to be reasonably applicable to absorption of the color additive from a cosmetic or drug applied to the skin.

CTFA provided estimates of the amount of the color additive absorbed daily by combining the information on daily usage (upper 90th percentile) of the external cosmetic and drug products with data on the D&C Red No. 9 content of the products (average and maximum) and estimates of the proportion of the color additive absorbed. CTFA emphasized that these data were deliberately chosen to overestimate exposure.

The usage values are upper 90th percentile values. The concentration of D&C Red No. 9 is presented both as the maximum used in any formulation of each product type and as the average concentration in formulations that contain D&C Red No. 9. For all product categories, there are many formulations that do not contain D&C Red No. 9. Thus, a true "average" would be much lower, and the "average" values listed greatly overestimate the extent of exposure to D&C Red No. 9 from its use in externally applied cosmetic and drug products.

By summing the values of D&C Red No. 9 absorbed per day for each product containing the color additive, CTFA determined the "worst case" maximum amount absorbed for all or any combination of products. Summing all values gives a daily "worst case" absorption of 3.44 micrograms or 0.065 microgram per kilogram per day for a 53-kilogram adult female using all products containing the maximum level of D&C Red No. 9 at the upper 90th percentile usage frequency.

The estimate of exposure to D&C Red No. 9 from use in lip products was based on the amount of lip product applied per application, the number of applications per day, the concentration of D&C Red No. 9 in lip products, and the fraction of applied lip product that may be swallowed. Based on "worst case" assumptions, the maximum daily exposure to D&C Red No. 9 from ingestion of lip products containing 2 percent dye would be 8 micrograms per kilogram per day for a 53-kilogram adult female.

The panel, at FDA's request, critically evaluated CTFA's assessments and the underlying assumptions. A discussion of the panel's evaluation is provided in a later section of this rule.

IX. CTFA's Low-Dose Carcinogenic Risk Assessment Approach

CTFA conducted risk assessments using the splenic tumor data from both the NCI/NTP study and the CTFA study and the "worst case" maximum projections of human exposure and skin penetration. The risk related to use of D&C Red No. 9 in external drugs and cosmetics was separated from the risk of D&C Red No. 9 used in lip products. The low-dose carcinogenic risk assessment approach used by CTFA proceeds in four steps:

1. Selection of the set of data on tumor incidence judged most appropriate as the basis for inference of human risk;
2. Extrapolation of these data to provide "best estimate" calculations, thus providing a range of risk to mice and rats at low-dose levels;
3. Extrapolation of the potential risk to humans at low-dose levels; and
4. Calculation of the potential risk to humans at the likely level of exposure from known patterns of use.

CTFA acknowledged that each of these steps required the use of assumptions with varying degrees of certainty. It was standard procedure by CTFA to make highly conservative "worst case" assumptions at each step, so that the final estimates likely overstated the actual risks by large factors. In its report, CTFA presented both "best conservative estimate" and "upper bound estimate" calculations to illustrate the range of potential risk. The "best conservative estimate" was based upon the extrapolation curve that best fits the experimental data, but also included such highly conservative "worst case" elements as the assumption that an individual consumer will be in the upper 90th percentile for frequency of use of all cosmetic products and will use only those cosmetic products that contain D&C Red No. 9 at the maximum concentration. The "upper bound estimate" includes all "worst case" assumptions. However, CTFA concluded that an "upper bound estimate" of risk to humans could not be made using the NCI/NTP data because of the production of rat spleen tumors at only high dose levels. This phenomenon, CTFA contends, is inconsistent with a linear relationship between dose and responses at low levels of exposure, which is assumed in "upper bound estimates," and, thus, the use of an upper confidence limit in this situation would overestimate the risk by several orders of magnitude. CTFA, therefore, calculated the risk assessments for the NCI/NTP's splenic tumors based only on the maximum likelihood estimates.

The multistage extrapolation model using the NCI/NTP splenic data and the "worst case" maximum human exposure provides a "best conservative estimate" of potential lifetime risk to humans from use of D&C Red No. 9 in external drugs and cosmetics of 1.5×10^{-12} (1 in 670 billion). CTFA did not believe an "upper bound estimate" of risk for external uses could be supported from the NCI/NTP splenic data so an estimate was not calculated. Using the CTFA data, the "best conservative estimate" would be 2.8×10^{-8} (1 in 360 million) and an "upper bound estimate" of 8.6×10^{-9} (1 in 120 million). CTFA contended that the risk estimates using the CTFA data are higher than the estimate using the NCI/NTP data because, in the NCI/NTP study, there was a sharp drop in response from the high to low dose of D&C Red No. 9, but in the CTFA study, the high-dose response was very small and not significantly higher than the response in the control animals.

The risks estimated for exposure to D&C Red No. 9 through ingestion of lip products containing the color additive are higher than those calculated for external products. Using the NCI/NTP splenic data, CTFA concluded that the multistage extrapolation model provided

a "best conservative estimate" of lifetime risk to humans of 2.0×10^{-8} (1 in 50 million) for the 2 percent concentration and 5.4×10^{-9} (1 in 185 million) for the 1 percent concentration. CTFA did not believe an "upper bound estimate" of risk for ingested uses could be supported from the NCI/NTP splenic data because the observed dose-response curve for the spleen tumors was not linear and had a sharp drop in response from the high to low dose of D&C Red No. 9. Thus, using the CTFA splenic data, CTFA concluded that the "best conservative estimate" was 3.3×10^{-7} (1 in 3 million) for the 2 percent concentration and 1.7×10^{-7} (1 in 6 million) for the 1 percent concentration, and that the "upper bound estimate" was 1×10^{-6} (1 in 1 million) for 2 percent concentration and 5.2×10^{-7} (1 in 2 million) for the 1 percent concentration.

X. Scientific Review of Test Data

A. FASEB Review

NCI, under a contract which ran from April 1, 1983, through March 30, 1985, requested that the Life Sciences Research Office, Federation of American Societies for Experimental Biology (FASEB), organize an expert panel to evaluate the possible carcinogenicity and genotoxicity of 109 drug and 64 cosmetic ingredients, including the color additive D&C Red No. 9. This contract was noteworthy because CTFA had requested, on May 1, 1984, that the Department of Health and Human Services refer scientific issues on D&C Red No. 9 to FASEB for peer review.

The FASEB expert panel has reviewed the scientific issues that relate to D&C Red No. 9. It concluded that the splenic tumors in rats are directly related to the ingestion of this color additive. Although the FASEB panel speculated that the carcinogenic agents were probably metabolites produced by gut bacteria, it noted the lack of data on the metabolism of D&C Red No. 9 and on the mutagenicity of its metabolites. The FASEB panel also concluded that it could not address the issue of carcinogenicity in humans because of the lack of critical information on the human metabolism of D&C Red No. 9. (The FASEB panel's report is included in the administrative record for these color additives.)

B. Color Additive Scientific Review Panel

FDA's evaluation of the petitions for permanent listing of D&C Red No. 8 and D&C Red No. 9, and other available information, raised questions concerning whether CTFA's risk assessments were valid. As discussed above, FDA convened the panel to address these questions. The membership of the panel is outlined in the **Federal Register** of June 26, 1985 (50 FR 26379), which is incorporated by reference.

The panel was charged to evaluate the available data, information, and views on the color additives and to provide answers to the following questions:

1. Can valid quantitative risk assessments be performed for these color additives?

2. Does the available information support the data analysis and risk assessments that have been performed and are before the agency?

XI. Report of the Color Additives Scientific Review Panel

The panel evaluated the possibility of performing scientifically valid carcinogenic risk assessments on D&C Red No. 8 and D&C Red No. 9. The panel did not consider risk assessments for other toxic endpoints—indeed, it was not necessary to do so because no safety concerns other than carcinogenicity have been associated with the uses of D&C Red No. 8 and D&C Red No. 9. The panel's report contains a discussion on the assumptions that must be made in conducting a risk assessment and the uncertainties that are associated with such assumptions. The report is supported by several recent government agency efforts directed at developing a consensus of risk assessment: (1) The National Academy of Sciences Report on Risk Assessment; (2) the Office of Science and Technology Policy Document on Chemical Carcinogenesis; and (3) the Executive Committee, Coordinating Committee on Environmental and Related Programs Report on Risk Assessment.

The report contains a scientific introduction section for the major topics being discussed as well as a section on the general assumptions used in risk assessment of colors. The report discusses the risk assessments for each of the color additives by discussing major topics for each and the color additive-specific assumptions used, with the focus on the risk under practical conditions of use. Each chapter also contains a risk characterization section which discusses the risk assessment of the individual color additive.

In its report, the panel critically reviewed the risk assessments submitted by CTFA. This included a detailed examination of the risk assessment methodology used by CTFA. In a summary chapter of the report (Chapter 9) the Panel stated that:

> In order to obtain a better perspective on the very complex and multifaceted problem of assessing exposure and toxic effect of the dyes, it was imperative to search for the many obvious or hidden, explicitly stated or implied assumptions associated with risk assessment of the dyes. In dissecting the presented problem into the smallest possible components, for which separate solutions might be formed, the Panel opted for starting with formulating the assumptions according to CTFA's line of reasoning (it should be emphasized, however, that CTFA made these assumptions to, presumably, derive a conservative risk estimate, while not necessarily supporting them). This was followed by a careful analysis of the validity of the statements, the possible alternatives to dealing with the gaps in knowledge and lack of information, and the quantitative assessment of the impact of the assumption on the magnitude of the risk of cancer, assuming that the dyes do pose such a risk to humans.
>
> While evaluating the many kinds of uncertainties in hazard identification, exposure assessment, and dose-response assessment, the Panel developed the view that, rather than limiting its role to analyzing CTFA's lines of reasoning, it attempt to use its analysis to generate modified risk estimates. This includes an estimate of the absorbed dose based on more "reasonable" assumptions than those used in the CTFA assessments.

In the risk characterization section in the various dye chapters in the report, the panel compared the 90th percentile and the average usage (based on reasonable estimates). For the purpose of presenting the panel's assessment of the numerous assumptions used in the CTFA risk assessments, the agency has summarized that portion of the panel's report which discusses the assumptions and the associated uncertainties. The summary below deals with assumptions which are especially relevant to all color additives reviewed by the panel.

A. The Panel's Assumptions Used in Hazard Identification

The panel generally accepted the assumptions used in the CTFA risk assessments largely because there seem to be no alternatives with higher degree of validity for the uncertainties involved and because they are consistent with what the panel understood FDA's policy to be. The panel believed the assumptions it relied upon to be conservative, i.e., more likely to overestimate rather than underestimate the true risk.

The panel's assumptions concerning hazard identifications were:

1. Because all six dyes of concern, including D&C Red No. 8 and D&C Red No. 9, are animal carcinogens in some

assay, they are suspect human carcinogens. (The panel made no evaluation of the weight-of-evidence for human carcinogenicity from the animal test results.)

2. Orally administered or ingested dyes are equally well absorbed in animals and humans, regardless of the test concentration of the dye and of the vehicle used.

3. Studies involving high doses of a compound under test are appropriate for low-dose extrapolation.

B. The Panel's Assumptions Used in Exposure Assessment

The panel's general assumptions regarding exposure assessments were:

1. The dyes are equally absorbed in rodents and man.

2. Dyes which penetrate the skin are as effective in evoking a carcinogenic response as if ingested.

3. For each dye, exposure is for 60 years (in contrast to CTFA's use of 70 years) and risk is not influenced by age at exposure. This results in a correction factor of 6/7.

4. An arbitrary value should be used to reflect the fact that cosmetic products contain other dyes than those of concern (or no dyes at all). Compared to the CTFA estimate, this results in a correction factor of 0.5.

5. Based on data for D&C Red No. 19 only, the average concentration of all dyes in commercial products is 25 percent of the highest concentration allowed. Compared to the CTFA estimate, this results in a correction factor of 0.25.

6. The skin model used for the skin absorption studies is appropriate for assessing the exposure to absorbed dye. Although the model is likely to overestimate the risk for products applied to the facial skin (skin penetration rates are likely to vary for different areas of the body), the model may underestimate the real absorption rate by a factor of 3.

7. In interpreting the results of the in vitro study on the absorption rates over time, the true absorption rate equals the steady state rate. Where the test did not reveal a steady state, twice the maximum rate at the end of 3 days approximates the true absorption rate.

8. Both types of CTFA surveys of the frequency of the use of dye-containing products overestimate the frequency amount the general population.

9. The absorbed amount of dye per day can be estimated by multiplying the amount of dye per day available for absorption by an absorption rate constant, as estimated from the in vitro tests. There is insufficient information to calculate a better, less conservative estimate.

10. For each dye, the total exposure is the sum of exposures to all products containing the same dye.

11. The amount of dye-containing product per application is approximately 5 to 10 milligrams per square centimeter.

12. With the exception of nail products, the composition of the vehicle used in the commercial products does not affect the absorption rate assessed with the in vitro skin model. There is insufficient information to generate a best estimate of the absorption rate for each kind of commercial vehicle.

13. In an appropriate vehicle, there is no difference in absorption rate between a primary dye and its lake.

14. Based upon consideration of the structure and toxicity of actual impurities found in certified lots, the skin penetrance rates of subsidiary color additives are not likely to be significantly different from that of the principal constituent. The skin penetrance rates of the other substances of concern (e.g., residual starting materials) have, at most, an effect of multiplying the risk by 1.2. This results in a correction of CTFA's estimate of the exposure by a factor of 1.2.

The panel's product-specific assumptions regarding exposure assessments were:

1. The absorption rate for hair cosmetics is 1.2 percent of the applied amount. This results in a correction of CTFA's estimate by a factor of 0.6.

2. No absorption occurs from dyes in nail products (CTFA assumed that 1 percent of the applied amount will penetrate the skin).

3. For bathwater products, 2 percent of the applied amount reaches the skin.

4. For wash-off products (including bathwater products), there is an absorption of 25 percent (CTFA assumed an absorption of 50 percent and excluded bathwater products from this consideration). This results in a correction of CTFA's estimate by a factor of 2.

5. For products other than wash-off products, there is an absorption of 50 percent (CTFA assumed an absorption of 100 percent). This results in a correction of CTFA's estimate by a factor of 2.

C. The Panel's Assumptions Used in Dose-Response Assessment

1. In test animals, 50 percent of orally administered dyes are absorbed from oral studies and the carcinogenic response is caused by this absorbed portion. This results in a correction of CTFA's estimate by a factor of 2.

2. On a milligram per kilogram body weight basis, dose levels used in animal tests are assumed to have the same quantitative effect on the cancer incidence in humans. There is insufficient information for assessing the best estimate of the correct dose unit for use in extrapolating animal risk to human risk of cancer.

3. The average body weight for an adult woman is 53 kilograms.

4. The linearized multistage model reflects the true relationship between dose and response. The linearized multistage model may offer no added protection, however, in the convex portion of the dose-response curve. Low-dose linearity may overestimate the risk by several orders of magnitude if low-dose linearity is not present.

5. The most sensitive animal tumor data should be used to extrapolate risk from animal data to humans.

D. The Impact of the Panel's Assumptions on CTFA's Risk Estimate

In the chapters of the report concerning specific dyes, the panel applied the foregoing product- and dye-specific assumptions and correction factors to the usage data contained in the CTFA risk assessments. The panel also applied these assumptions to the survey estimates of 90th percentile exposure (the Risk/90 values) and average and "reasonable" estimates of exposure (Risk/Rea), thereby deriving revised risk estimates.

The impact on CTFA's risk assessment of the panel's general, quantifiable assumptions concerning exposure and dose-response are:

1. For skin absorption, a correction factor of 0.8 times the CTFA estimate ($6/7 \times 0.5 \times 0.25 \times 3 \times 1.2 \times 2$).

2. For incidental ingestion of lip products, a correction factor of 6/7 times the CTFA estimate (a number of factors relevant only to skin absorption or not relevant to lipstick products do not apply).

3. At low dose levels, the risk of cancer, as computed with the linearized multistage risk model, is directly proportional to the dose levels.

The panel concluded that the correction factor of 0.8 for skin absorption is inconsequential when compared to the uncertainties in the assumptions that are difficult to quantify. The panel cautioned that the correction factor for skin absorption does not mean that the risk estimate is precise within 20 percent of the actual human risk. On the contrary, the figure merely represents the fact that, for the various quantifiable assumptions, underestimations and overestimations

of risk in the CTFA estimates basically cancel out.

The panel also noted that many of the assumptions are not quantifiable. The panel, following prudent public health policy, stated that it accepted assumptions which are likely to overestimate rather than underestimate risk in the cases difficult to quantify and is of the opinion that the human risk in the risk estimates it made is more likely to be over- rather than underestimated.

E. Specific Assumptions

The panel in its review of the risk assessments for D&C Red No. 8 and D&C Red No. 9 evaluated a number of CTFA's specific assumptions relevant to the color additives. The assumptions and the panel's comments are as follows:

1. CTFA assumed that the absorption rate for D&C Red No. 9 is 0.06 percent per day of the applied amount, except for those products that need adjustment.

The panel stated that this assumption would be reasonable if the rate is a steady state absorption rate. Although the test report indicated that no steady state was reached, Figures 1 and 2 of the report (page 8, Dr. Franz's study) clearly show a plateau for split-thickness skin chambers with castor oil and cream as vehicles. The panel concluded that this observation reflected a steady state of absorption.

2. CTFA assumed that the use of Volpo 20 in the receptor of the Franz cell will not significantly alter the skin penetration.

The panel stated that the use of Volpo 20 may result in higher observed skin penetration rates. The panel concluded that this is not likely to significantly affect the risk estimates.

3. CTFA assumed that 50 percent of the amount of lipstick applied will be swallowed.

The panel agreed with CTFA that 50 percent is likely to be an overestimation. Because specific data for adjusting the percentage swallowed are not available, however, the panel accepted CTFA's estimate for the purpose of this review.

Based on its review of these color additive specific assumptions, the panel used the following assumptions in risk characterization:

1. The absorption rate is 0.06 percent per day of the applied amount, except for those products that need adjustment, which is in agreement with CTFA's assumption.

2. The values from the in vitro absorption studies using Volpo 20 may be used without correction.

3. Fifty percent of the lipstick is swallowed.

4. D&C Red No. 8 has toxicological effects similar to D&C Red No. 9. Therefore, the risk estimates of D&C Red No. 9 are used to devise a unit risk.

The panel also used the following product specific assumptions in risk characterization:

1. For hair cosmetics, the CTFA estimate that 2 percent of the applied amount of dye reaches the skin is an overestimation, requiring a correction factor of 0.6

2. For nail products, the absorption of dyes is zero.

Relying upon the usage frequency information provided by CTFA, the panel revised risk estimates for D&C Red No. 9. (CTFA made no estimates of risk from D&C Red No. 8.) On the basis of information on the usage frequency that indicated that D&C Red No. 9 is present in six groups of products, the panel calculated the total absorbed amount of the dye to be:

1.211 micrograms per day as an average of the retrospective usage survey;

1.716 micrograms per day as the upper 90th percentile of the retrospective survey as compared to the CTFA estimate of 3.44 micrograms per day.

Relying upon its dye- and product-specific assumptions and CTFA's usage, frequency, and amount per application information given, the panel calculated the total ingested amount of D&C Red No. 9 from drug and cosmetic lip products to be:

86 micrograms per day as an average based on a survey of ingested lipstick:

415 micrograms per day as the upper 90th percentile as compared to the CTFA estimate of 424 micrograms per day.

The panel believed that the prospective survey is less biased than the retrospective study. No results, however, have been provided from the prospective survey so the retrospective study data are used.

In addition, the panel used the most sensitive carcinogenic end point, the positive NCI/NTP study (which used Fischer 344 rats), to calculate the "upper bound estimate" of risk for D&C Red No. 9 rather than the CTFA study. The panel, using data submitted by CTFA on human exposure and data on the relationship of dose to tumor incidence from the NCI/NTP bioassay, calculated the "upper bound estimate" of risk for ingested and external uses of D&C Red No. 9. These risks are reported in the panel's report as Risk (CTFA/90) (the 90 referring to the upper 90th percentile of exposure to the color additive) as 4.3×10^{-8} for external uses and 5.1×10^{-6} for ingested uses as the "upper bound estimates" of lifetime risk. The panel concluded that a valid risk assessment could be performed using the multistage model and that "upper bound estimates" of lifetime risk consistent with current risk assessment usages could be adequately calculated from the NCI/NTP data and were representative of the ingested and external uses of D&C Red No. 9.

The panel used the linearized multistage extrapolation model. With this model, the dose-response curve is linear at low-dose levels. This means that the risk of cancer is assumed to be directly proportional to the dose. The panel based its risk estimates on 53 kilograms as a lifetime weight average for women, and included the correction factor of 0.8 for skin absorption and 6/7 for incidental ingestion to adjust for its view on the quantifiable general assumptions and calculated the Risk/90 for external uses as 1.7×10^{-8} (1 in 59 million) and for the ingested drug and cosmetic lip product uses as 4.3×10^{-6} (1 in 230,000). The panel's revised estimates are:

	Risk(CTFA/90)*	Risk/90	Risk/REA
External	4.3×10^{-8}	1.7×10^{-8}	1.2×10^{-8}
Ingested	5.1×10^{-6}	4.3×10^{-6}	8.9×10^{-7}

* Note that CTFA did not calculate risk estimates based on average exposure levels.
Risk(CTFA/90) is the CTFA risk estimate at the upper 90th percentile of exposure.
Risk/90 is the risk estimate based on the panel's calculation at the 90th percentile of exposure.
Risk/REA is the risk estimate based on the panel's calculation of a more reasonable estimate of exposure.

The panel's calculation of the risk from ingestion does not include the risk due to absorption of D&C Red No. 9 through the lip surface. Because the skin absorption rate of any of the tested vehicles was less than 0.1 percent, the incremental risk from absorption through the lip surface would be orders of magnitude lower than the risk from ingestion.

The risk estimates above are based on the reasonable estimates of exposure,

whenever the panel believed that it was possible to make such an estimate. In situations where available data did not allow for a choice between "degrees of reasonable estimate," the panel consistently selected the estimate associated with the higher risk.

The panel noted that its use of an upper 95 percent confidence limit for the linearized multistage model utilized in the low-dose extrapolation probably leads to an overestimate of risk for rodents. The panel also noted that relying on the assumption that rodents and humans are equally susceptible to the toxic effects of the color additives and using the most tumor-sensitive site and species in conjunction with conservative estimates of exposure are likely to overestimate the risks to humans presented by the use of D&C Red No. 9.

F. Unit Risk Estimates for D&C Red No. 8

D&C Red No. 9 is a barium salt and D&C Red No. 8 is the sodium salt of the same anion. Given the highly acid milieu of the stomach, there would be no reason for assuming that D&C Red No. 8 would behave differently from D&C Red No. 9 with regard to the cancer response to oral dosing. Once absorbed, therefore, it is reasonable to assume an equal toxicity and an equal dose-response curve for D&C Red No. 8 and D&C Red No. 9.

The panel cautioned that there is no exposure information for D&C Red No. 8, and, therefore, that its unit risk estimate for this color additive is based on simple extrapolation from a chemically related dye, D&C Red No. 9. FDA concludes that, because of their similar solubilities, there would be essentially no difference between the two color additives in absorption through the skin. Also, data submitted by the petitioner showed that the solubility of D&C Red No. 8 and D&C Red No. 9 in water is less than 5 parts per million.

The panel also noted that the nature of the unit risk estimate is different from the risk estimates calculated for D&C Red No. 19, D&C Orange No. 17, D&C Red No. 9, and FD&C Red No. 3. The unit risk estimate is actually a unit risk, i.e., a risk calculated on the basis of a particular unit of exposure, e.g., a risk of 4.3×10^{-8} for an external CTFA exposure of 3.44 micrograms per day to D&C Red No. 9. The panel concluded that, although there is no information on actual human exposure to D&C Red No. 8, human exposure to this color additive is probably less than exposure to D&C Red No. 9. The panel based its conclusion on production data concerning the two dyes.

The panel pointed out that the few tests for genetic toxicity that have been performed on D&C Red No. 8 have been negative. The panel assumed that D&C Red No. 8 has the same toxicological effects as D&C Red No. 9, and that any difference in the risk between D&C Red No. 8 and D&C Red No. 9 is related to the differences in exposure.

FDA agrees with the findings of the panel concerning unit risk and that a unit risk can be estimated for D&C Red No. 8 based on extrapolation from D&C Red No. 9 data. Additionally, the agency finds that the risk calculated for D&C Red No. 9 reasonably overestimates the potential risk associated with the use of D&C Red No. 8.

XII. FDA's Decision to Permanently List D&C Red No. 8 and D&C Red No. 9

A. Reliance on Risk Estimation Techniques

The data and information regarding the safety of D&C Red No. 9 support FDA's conclusion that the substance induces cancer when tested in laboratory animals. The data and information, however, do not support any other significant finding of toxicity.

In the past, because the data and information show that D&C Red No. 9 and, by implication, D&C Red No. 8 are carcinogens when ingested by laboratory animals, FDA, in all likelihood, would have terminated the provisional listing and denied CTFA's petition for the drug and cosmetic uses of the color additives without any further discussion. In the present instance, however, CTFA has presented arguments that these color additives can be regulated for safe use both in externally applied drugs and cosmetics as well as in drug and cosmetic lip products that are ingested as an incidental aspect of their use. The arguments CTFA has presented are based on the premise that a determination of safety may be based on risk assessment techniques. FDA agrees that risk estimation methods are frequently helpful in evaluating the safety of carcinogenic substances. It was for this reason that the agency requested the panel to determine whether the data and information available concerning D&C Red No. 8 and D&C Red No. 9 provided an adequate basis from which to make reliable risk estimations.

1. *Externally applied drug and cosmetic uses.* FDA agrees with the panel that CTFA's risk estimates on the use of D&C Red No. 8 and D&C Red No. 9 in externally applied drugs and cosmetics, as modified in the panel's report, represent a reliable upper bound risk and that those risk estimates can be used to evaluate the proposed external uses of D&C Red No. 8 and D&C Red No. 9.

Under section 706(b)(4) of the act (21 U.S.C. 376(b)(4)), the so-called general safety clause of the statute, FDA cannot approve a color additive for a particular use unless the data presented to FDA establish that the color additive is safe for that use. Although what is meant by safe is not explained in the general safety provision, the legislative history of the act makes clear that safety requires proof to a reasonable certainty that no harm will result from the proposed use of an additive. Because FDA considers D&C Red No. 8 and D&C Red No. 9 to be carcinogens when ingested by laboratory animals, as discussed above, the Delaney Clause (section 706(b)(5)(B)(i) of the act) is applicable. A strictly literal application of the Delaney Clause would prohibit FDA from finding that the color additives are safe and, therefore, prohibit FDA from permanently listing the color additives for externally applied uses in drugs and cosmetics. However, as seen from CTFA's and the panel's risk estimates, the calculated risks for these uses of D&C Red No. 8 and D&C Red No. 9 are extremely low. In fact, the risk levels are lower than that level of risk which the agency accepts in other areas concerning carcinogens; for example, in its procedures and criteria for permitting carcinogenic food additive residues in animal tissues under section 512(d)(1)(H) of the act, the DES proviso to the Delaney Clause (21 U.S.C. 360b(d)(1)(H)) (see 50 FR 45530, 45541; October 31, 1985; FDA refers to these procedures and criteria as the sensitivity of the method or SOM procedures). With such negligible risks, there is no gain to the public and the statutory purpose is not implemented or served by an agency action delisting the substance.

2. *The ingested drug and cosmetic lip product uses of D&C Red No. 8 and D&C Red No. 9.* Currently, D&C Red No. 8 and D&C Red No. 9 may be used in lipsticks and other cosmetic and drug lip products in concentrations of up to 3 percent of the pure dye by weight of each cosmetic product. See, e.g., 21 CFR 81.25. These uses of the dye result in some degree of incidental ingestion. The panel's revised risk estimates for these uses reflect the risk presented by 2 percent of either dye. The panel, however, emphasized that its risk estimates were based on recent usage surveys and that any increase or

decrease in the usage of the color additives would result in a proportionate change in the estimates of risk.

When there is a negligible risk presented by the use of a color additive, there is no gain to the public and the statutory purpose is not implemented by prohibiting the color additive for that use. The agency has stated in other proceedings that lifetime risks on the order of 1 in 1 million are negligible (see, e.g., FDA's proposal concerning the use of methylene chloride to decaffeinate coffee, 50 FR 51551; December 18, 1985). The panel estimated the lifetime risk from the incidental ingestion of D&C Red No. 8 and D&C Red No. 9 in lip products at a concentration of 2 percent to be 4.3 in 1 million. A 0.4 percent concentration of dye instead of the 2 percent figure for ingested drug and cosmetic lip products would, however, pose a risk of 1 in 1.2 million.

The possibility exists that this level of risk may not represent an upper bound level of risk to humans ingesting D&C Red No. 9. The metabolism of the color additive and the absorption of any carcinogenic metabolites are likely to be more efficiently performed in the human intestines. Food passes through the intestines of the rat two to three times faster than through the intestinal tract of humans (Refs. 9 and 10). In rats this shorter time of exposure of the intestinal microflora to the test compound may have resulted in a less efficient metabolism than may occur in humans. If so, the test animals would have been exposed to a lower level of carcinogenic metabolites than would humans consuming the compound. In addition, the levels of D&C Red No. 9 to which humans are exposed is hundreds of times less than in rat experiments where cancer was produced. Therefore, in humans, there would be less azo color to be reduced and, thus, a greater likelihood that all or most of the azo color would be reduced than in the rat experiments at large multiples of use levels (Ref. 11).

Accordingly, the agency believes that it is appropriate to further reduce the permissible concentration of the color additive to 0.1 percent. This reduction takes into account the potential for dissimiliarity between the test animals and humans in the duration of exposure and in the levels of exposure to potential carcinogenic metabolites. The agency believes that this reduction ensures that the level of risk derived from the NCI study is likely to represent the upper bound level of risk presented by ingestion.

At the 0.1 percent concentration, the additive remains useful in imparting color for some products. Accordingly, D&C Red No. 8 and D&C Red No. 9 will be listed for incidental ingested uses at a concentration of 0.1 percent.

B. Resolution of Agency's Concerns Regarding Starting Material Impurities, Subsidiary Color Additives, and Metabolites Resulting from Azo Reduction of the Color Additives

1. *Statement.* As noted above, all of the chronic toxicity/carcinogenicity studies of D&C Red No. 9 have demonstrated a common pattern of unusual splenic lesions only in treatment groups. FDA's evaluations of these studies, in particular the NCI study, focused on the possible role impurities could have had in eliciting the observed carcinogenic response. The impurities of primary concern are those derived from unsulfonated aromatic amines present in the lake red C amine intermediate used to manufacture the color (Ref. 19). These impurities, which are present during the manufacturing steps for the color, lead to the contamination of the color additive with unsulfonated subsidiary colors. The unsulfonated subsidiary colors are of primary concern since it is possible that the azo reduction of these contaminants during metabolism could form compounds that were responsible for the carcinogenic effect observed. If the carcinogenic effect was induced by compounds formed by the reduction of the subsidiary colors, the level of risk presented by any given batch of D&C Red No. 8 or D&C Red No. 9 could vary depending upon the concentration of these impurities in the batch.

2. *The possible carcinogenicity of unsulfonated subsidiary colors.* The panel noted the presence of unsulfonated subsidiary colors (aromatic azo compounds) in commercial batches of D&C Red No. 8 and D&C Red No. 9. The agency is concerned that these impurities may be responsible for the carcinogenicity of D&C Red No. 9. The agency's concern arises from the fact that none of the breakdown products of the principal color component of D&C Red No. 9 appears to be carcinogenic based on chemical structure and other properties.

Upon azo reduction of the principal sulfonated color component of D&C Red No. 9, two aromatic amine molecules are freed. One is 2-hydroxy-1-naphthylamine (which is not sulfonated) and the other is chloro-sulfo-toluidine. The former is an unstable compound that is readily oxidized and is not, as the panel noted, an aromatic amine that might be expected to be carcinogenic. The chloro-sulfo-toluidine is also not expected to be carcinogenically active because of the sulfonic acid moiety on the aromatic ring. This moiety is expected to block any potential carcinogenic effect (Refs. 12, 13, and 14).

The compound, *p*-chloroaniline, which is structurally very similar to the chlorinated aromatic amines that would be generated by azo reduction of the unsulfonated subsidiary colors has been found to induce sarcomas of the spleen in the same strain of rats used in the bioassay of D&C Red No. 9 (Ref. 15). Other aromatic amines including aniline also induce sarcomas of the spleen in this rat strain. However, the ability of aniline to induce splenic cancer is blocked when a polar group (carboxyl) is placed in the same position as the sulfonic acid group in chloro-sulfo-toluidine (see "Bioassay of Anthranilic Acid for Possible Carcinogenicity," Report No. 36, National Cancer Institute, (1978)). The sulfonic acid group would be expected to block carcinogenicity of chloro-sulfo-toluidine in a similar fashion. Thus, there is a basis for concern that the unsulfonated subsidiary colors present in commercial batches of D&C Red No. 9 may contribute to the carcinogenic effect associated with this color additive.

3. *Levels of unsulfonated subsidiary colors.* Data are available to the agency regarding the combined level of unsulfonated subsidiary colors present in D&C Red No. 9 batch tested in the NCI study (Ref. 16). No information is available concerning the levels of the individual unsulfonated subsidiary colors present in the test batch. The level of unsulfonated subsidiary colors has been found to vary by at least 50-fold from one commercial batch of FD&C Yellow No. 6 to another (Refs. 17 and 18). Without adequate data concerning the variations of levels of individual unsulfonated subsidiary colors in D&C Red No. 9, it is not possible to ensure that the upper bound risk estimated for the batch shown in the NCI study to produce cancer would not be exceeded by different batches containing higher levels of subsidiary colors.

4. *Resolution.* In light of the foregoing uncertainties regarding the toxicity and potential variation in the amount of unsulfonated subsidiary colors that might be present in a given batch of D&C Red No. 9, the agency has concluded that limiting exposure to total unsulfonated subsidiary colors will ensure that the upper bound level of risk based on the NCI study will not be exceeded in a given batch of the color additive. Therefore, the agency has decided to require that all certified batches of D&C Red No. 8 and D&C Red

No. 9 be produced so that the levels of total unsulfonated subsidiary colors present in D&C Red No. 8 and D&C Red No. 9 do not exceed the sensitivity of the analytical method used for their detection. This level is 50 parts per million. The requirement is technically achievable for manufacturers in light of the fact that a practical manufacturing process for producing D&C Red No. 9 containing greatly reduced levels of unsulfonated subsidiary colors has recently been published (Ref. 19). This process described by Naganuma et al. (Ref. 19) achieves a reduction in unsulfonated subsidiary colors in D&C Red No. 9 by purification of the 2-amino-5-chloro-4-methylbenzenesulfonic acid intermediate used in the synthesis of the color additive. It is reasonable to assume that the removal of the impurities from this intermediate will not be selective but will affect each such impurity. Thus, it is expected that all the unsulfonated subsidiary colors will be reduced by this purification. The agency believes that this specification will ensure that the level of unsulfonated subsidiary colors present in a batch of certified D&C Red No. 8 or D&C Red No. 9 will not present a greater risk than that presented by levels that may have existed in the toxicology sample.

C. FDA's Conclusion Regarding the Safety of the Externally Applied and Ingested Drug and Cosmetic Lip Product Uses of D&C Red No. 8 and D&C Red No. 9

In light of the foregoing, FDA concludes that it should not interpret the Delaney Clause to require a ban on the externally applied uses of D&C Red No. 8 and D&C Red No. 9.

The agency also concludes that it should not interpret the Delaney Clause as requiring a ban on the ingested uses of D&C Red No. 8 and D&C Red No. 9 in cosmetic or drug lip products, provided the amount of the color additive does not exceed 0.1 percent of the pure dye by weight of each product. In the context of the ingested uses of D&C Red No. 8 and D&C Red No. 9, the agency's action in this proceeding represents a significant reduction in the permissible concentration of the additives and in human exposure to the additives. This action assures safety and the public health and does not unduly restrict use of the additives at levels that clearly present no meaningful risk of harm. Accordingly, FDA has decided to exercise its inherent authority under the *de minimis* doctrine and concludes that the Delaney Clause does not require a ban in the case of the externally applied uses of D&C Red No. 8 and D&C Red No. 9 at levels of current good manufacturing practice and the incidental ingested uses of D&C Red No. 8 and D&C Red No. 9 not in excess of 0.1 percent of the pure dye by weight of each lip product. Because there are no other safety issues presented by the externally applied and the ingested drug and cosmetic (lip product) uses of D&C Red No. 8 and D&C Red No. 9, FDA finds the uses to be safe.

The agency has traditionally ensured purity of the color additives by batch analysis of manufactured batches. Determination of appropriate manufacturing steps to ensure purity, i.e., the ability to meet certification specifications has been left to the responsibility of the color additive manufacturer. In response to the panel's report, FDA has concluded that utilization of this traditional process will ensure the purity of D&C Red No. 8 and D&C Red No. 9. Accordingly, the agency is establishing stringent chemical specifications regarding subsidiary colors, chemical intermediates, and other impurities found in the color additives.

The agency has determined the specification limitations for these individual entities by considering the levels found in the toxicological samples and recently certified batches. In each case, the agency has selected a lower value to be established as the specification limit for each chemical entity in the color additive. In addition, the agency will require that the lakes of the color additives D&C Red No. 8 and D&C Red No. 9 be manufactured from previously certified batches, i.e., those batches of the straight color additive that have met the new chemical specifications regarding subsidiary colors, chemical intermediates, and other impurities found in the color additives.

The latter requirement is necessary in light of the panel's view, shared by the agency, that impurities in the color additive should be controlled. The requirement will ensure that the color additive to which the public is exposed is as close as possible to the substance that was tested and found by the agency to be safe. As an alternative to requiring that the lakes of D&C Red No. 8 and D&C Red No. 9 be made only from certified batches of the straight color additive, the agency considered whether lakes of the color additives could be analyzed to determine the level of impurities. There are numerous difficulties in attempting such an analysis (for a discussion of these difficulties, see the agency's notice of intended proposed rulemaking concerning lakes of color additives (44 FR 36411, 36414, June 22, 1979)). Given these difficulties and the limitations of available chemical analytical methodologies, the agency is requiring that lakes of D&C Red No. 8 and D&C Red No. 9 be manufactured from a batch of a certified color additive, in order to ensure that safety characteristics substantially correspond to the color that was tested, found safe, and permanently listed by this document.

In its advance notice of proposed rulemaking concerning lakes, the agency announced its intention to propose general regulations concerning the definition of lakes, the safety of lakes, and the specifications for lakes (44 FR 36411, June 22, 1979). In light of that notice, the agency when listing a color additive has in the past generally deferred final action concerning lakes of the color additive. However, because of potential variation in levels of impurities and the limitations of analytical methods described above, the agency believes it is necessary to impose the requirement for use of the certified straight color additives D&C Red No. 8 and D&C Red No. 9 prior to laking. This will ensure that the color additives to which the consumer is exposed are as similar as possible to that found by the agency to be safe. All remaining issues involving the lakes of D&C Red No. 8 and D&C Red No. 9 will be addressed in the agency's ongoing rulemaking proceeding announced in the June 22, 1979, notice.

D. CTFA's Legal Arguments

In its April 15, 1983, submission, CTFA argued that the applicable statutory authority under the act and judicial precedent authorize FDA to apply a *de minimis* interpretation of the Delaney Clause for a carcinogenic color additive that presents an insignificant risk of cancer. CTFA also argued that the Delaney Clause does not apply to the externally applied uses of D&C Red No. 8 and D&C Red No. 9 because the tests on D&C Red No. 9 are not appropriate for the evaluation of the substance.

FDA agrees with the former position and in the following section discusses the applicability of the *de minimis* doctrine to D&C Red No. 8 and D&C Red No. 9. The agency, however, disagrees with CTFA's latter argument, one that draws heavily on the agency's decision to list the color additive lead acetate (45 FR 72112, October 31, 1980; 46 FR 15500, March 6, 1981). CTFA's studies show that a portion of the radiolabeled material in the D&C Red No. 9 used for percutaneous study penetrated the skin and entered the circulatory system.

Under these circumstances in the absence of any metabolic or other data suggesting that ingestion studies are inapplicable, ingestion studies are appropriate as a basis for risk assessment of the external uses of D&C Red No. 8 and D&C Red No. 9.

Moreover, FDA's decision concerning lead acetate was based upon the unusual combination of scientific facts, peculiar to the use of lead acetate in hair dyes, which the agency recognized "will rarely, if ever, be presented again in this context" (45 FR 72112, 72115; October 31, 1980). Similar facts do not exist in the case of D&C Red No. 8 and D&C Red No. 9. For example, a key factor that influenced FDA's judgment that the Delaney Clause just did not apply to lead acetate was the fact that a background level of lead is always present in the blood of humans, a background level much greater than the possible increase in lead burden that would result from the use of lead acetate in hair dyes. There is, of course, no background level of D&C Red No. 8 and D&C Red No. 9 in humans. The agency believes that the tests on D&C Red No. 9 are appropriate for an evaluation of these substances under the Delaney Clause.

E. The de Minimis Doctrine and Its Applicability to D&C Red No. 8 and D&C Red No. 9

Two conditions must apply to justify an agency's exercise of its authority to interpret a legal requirement as not requiring action in *de minimis* situations. First, it must be consistent with the legislative design for the agency to find that a situation is trivial and, therefore, one that need not be regulated. *Alabama Power Co.* v. *Costle*, 636 F.2d 333, 360 (D.C. Cir. 1979). Second, it must be clear that the situation is in fact trivial, and that no real benefit will flow from regulating the particular situation. *Environmental Defense Fund* v. *Environmental Protection Agency*, 636 F.2d 1267, 1283–1284 (D.C. Cir. 1980). Both conditions apply here.

1. The establishment of a *de minimis* exception to the Delaney Clause is consistent with the legislative design.

In *Alabama Power Co.* v. *Costle*, supra, the court stated that the implication of *de minimis* authority is consistent with most statutes. The court stated that unless Congress has been extraordinarily rigid, there is likely a basis for an implication of such authority. *Id.* at 360–361. That Congress was not so rigid as to preclude the implication of *de minimis* authority under the Delaney Clause is evidenced both by the stated congressional intent in enacting the Delaney Clause and by the stated purpose of this provision.

The clearest statement of the congressional intent for the Delaney Clause is in the legislative history of the Color Additive Amendments of 1960. The Senate considered that the calculation of risk would permit interpretation of the Delaney Clause to allow approval of color additives producing a negligible risk. This is clear from a colloquy on the Senate floor initiated by Senator Jacob Javits in debate on his motion to reconsider the vote to approve the Color Additive Amendments. Senator Javits, focusing on the Delaney Clause, made the record clear in discussion with Republican leader Senator Dirksen and committee chairman Senator Hill that the Senate had agreed to pass the Color Additive Amendments with the Delaney Clause based upon its understanding that the authority conferred by that clause "should be used and applied within the 'rule of reason.'" 106 Congressional Record 15381 (July 1, 1960).[3] Both Senator Dirksen and Senator Hill agreed that the "rule of reason" was to be applied in interpreting the Delaney Clause. *Id.* On that basis, Senator Javits did not pursue his motion to reconsider.

The term "rule of reason" was taken from a report to the President from the President's Science Advisory Committee and from the Departments of Agriculture and of Health, Education, and Welfare (the predecessor to the Department of Health and Human Services) that analyzed the effect of the Delaney Clause that is applicable to food additives. That report defines the "rule of reason" as meaning that: "Every statute must be interpreted in the light of reason and common understanding to reach the results intended by the legislature." 106 Congressional Record 15380. The report stated its conclusion that "an area of administrative discretion based on the rule of reason is unavoidable if the clause is to be workable." 106 Congressional Record 15381.

This report on implementation of the food additive provision, relied upon by the Senators as illustrating their understanding of the types of circumstances in which the "rule of reason" would appropriately be applied, accurately predicted the advent of the science of risk assessment. The report stated that: "From the experience obtained in animal experiments and study of humans who have been exposed to carcinogens in the course of their work the panel believes that the probability of cancer induction from a particular carcinogen in minute doses may be eventually assessed by weighing scientific evidence as it becomes available." 106 Congressional Record 15380–15381.

Thus, the Senate agreed to adopt the color additive Delaney Clause only with the understanding that the clause would be administered with "a rule of reason," premised on the expectation that scientists would be able to determine the "probability of cancer induction." Thus, far from having been "extraordinarily rigid," Congress clearly contemplated that those administering the Delaney Clause would have discretion to implement that provision in a reasonable way.[4]

The purpose of the Delaney Clause in section 706 of the act is, after all, to protect the public from the possibility of increasing cancer risks through the use of color additives. It does not advance this purpose to prohibit uses that present a risk that is, for all practical purposes, zero. Congress recognized this fact in warning FDA not to "go overboard" in applying the Delaney Clause. 106 Congressional Record 15381. Thus, it is not inconsistent with the Delaney Clause to permit some uses of a carcinogenic color additive when those uses are shown to present a potential carcinogenic risk that is so trivial, based on extremely conservative statistical analyses, as to be the functional equivalent of no risk at all.

This interpretation of the Delaney Clause finds support in recent case law. In *Monsanto* v. *Kennedy*, 613 F.2d 947 (D.C. Cir. 1979), the court held that not all chemicals that become components of food need be considered food additives. The court stated that FDA has the authority to ignore a chemical that migrates from plastic packaging material into beverages if the amount of the chemical that migrates is *de minimis*. The court made that statement after it had found that some amount of the chemical in question would become a

[3] More recently, Senator Javits reviewed this discussion. On July 10, 1985, he sent Margaret Heckler, Secretary of the Department of Health and Human Services, a letter stating that his views had not changed since 1960. He stated that it was his continuing understanding that the rule of reason "would dictate that where the danger to the public is negligible in using products with such color additives, then use should not be prohibited." A copy of Senator Javits' letter to Secretary Heckler is included in the record of this rulemaking.

[4] This grant of discretion is not inconsistent with the fact that Congress clearly intended to prevent the imposition of a tolerance for a carcinogen. Where the probability of harm is so small as to be of no practical significance, it is reasonable and appropriate to apply the "*de minimis*" concept. And, doing so does not in any way reflect an intent to set a tolerance.

component of food by migration from packaging material—thus undeniably satisfying a literal reading of the statute. The court was concerned that the Commissioner may have reached his determination in the belief "that he was constrained to apply the strictly literal terms of the statute irrespective of the public health and safety considerations." 613 F.2d at 954. Accordingly, the court emphasized that there is "latitude inherent in the statutory scheme to avoid literal application of the statutory definition of 'food additive' in those *de minimis* situations that, in the informed judgment of the Commissioner, clearly present no public health or safety concerns." *Id.* Thus, the *Monsanto* decision is important to the agency's present action even though that case involved the definition of "food additive" and not the application of the Delaney Clause, and even though FDA, when it issued the order that was ultimately reviewed by the court, had not made a final determination as to the carcinogenicity of the chemical at issue, acrylonitrile monomer.

The court in *Monsanto* also held that the *"de minimis"* concept, applied to the threshold "food additive" definition, could be utilized to allow the marketing of a substance that presents no real public health risk. See 613 F.2d at 955–956. Thus, the court's decision in *Monsanto* has the practical effect of shielding substances that present effectively no carcinogenic risk from the Delaney Clause. Although the court did not explicitly interpret the Delaney Clause as inapplicable to such substances, the court presumably knew that if a carcinogenic chemical was disregarded as *de minimis* in relation to the food additive definition, the chemical would not be subject to the Delaney Clause, which applies only when that definition is met. Necessarily, therefore, the court regarded this consequence as legally warranted.

Moreover, in *Scott* v. *FDA*, 728 F.2d 322, 325 (6th Cir. 1984), the Sixth Circuit upheld the constituents policy, whereby FDA may approve known carcinogens present in color additives as intermediaries or impurities present at levels too low to cause a response using conventional tests. Noting that FDA had determined the public health risk presented by D&C Green No. 5 was negligible, the court reasoned:

> * * * We find this determination by the *Monsanto* court persuasive and relevant to the particular facts of the instant case. We agree with the FDA's conclusion that since it "has discretion to find that low level migration into food of substances in indirect additives is so insignificant as to present no public health or safety concern * * * it can make a similar finding regarding a carcinogenic constituent or impurity that is present in a color additive" 47 FR 24280 (1982).

In addition to the foregoing precedents, the state of scientific knowledge about cancer when the Delaney Clause was passed also supports the implication of *de minimis* authority under the Delaney Clause and the fact that the provision could not possibly have been meant to be "extraordinarily rigid." In 1958, there were only four substances that were known to induce cancer in humans: soot, radiation, tobacco smoke, and *beta*-naphthylamine (Ref. 20). Only 20 years later, scientists had identified 37 human carcinogens and over 500 animal carcinogens (Ref. 20). This growth in knowledge is in part the result of an enormous increase in carcinogenicity testing in laboratory animals. As testing increases, more and more substances are found to induce cancer at some site in at least some strain or sex of laboratory animal. For example, of the 86 compounds tested by the National Toxicology Program (NTP) and reported between July 1981 and July 1984, 50 percent were determined to induce some carcinogenic effect (Ref. 21). (It should be noted that many of the tested compounds were, prior to testing, suspected of being carcinogenic.) Furthermore, recent short-term and long-term toxicity testing has shown that a large number of substances naturally present in food are mutagenic or carcinogenic (Ref. 22).

With the advent of sensitive chemical analytical methodologies, scientists have been able to find carcinogens throughout the food supply in extremely small quantities. In 1958, the available methodologies were far less sensitive than they are today. For example, as FDA stated in its 1979 SOM proposal, the sensitivity of the methodologies increased during the period between 1958 and 1978 by "between two and five orders of magnitude" (44 FR 17070, 17075; March 20, 1979). This improved sensitivity has allowed the detection of carcinogens in the parts per trillion level so that, as one scientist has reported, "today substances can be routinely measured at concentrations up to a million times less than was possible in 1958" (Ref. 20).

There is no indication that in 1958 Congress foresaw the likelihood that, within less than 30 years after the Delaney Clause was enacted, science would have progressed so far as to be able to document the widespread presence of trace amounts of proven carcinogens in food. There is no indication that Congress anticipated the extent to which substances, then regarded either as absent from foods or as noncarcinogenic on the basis of less adequate technology, would later prove to be carcinogenic. In short, the scientific knowledge about carcinogens was much more limited in 1958 than it is today. The solution Congress decided upon in 1958 for handling added carcinogens, given that state of knowledge, was not extraordinarily rigid but was entirely reasonable, i.e., a few substances, present at levels then detectable, would be banned; most food would be unaffected.

Under these circumstances, it would not be consistent with the legislative design for FDA, today, to attempt to prohibit all added carcinogens from the food supply provided the risks presented by permitted levels are trivial. Permitting merely a *de minimis* level of risk from such carcinogens is not only sound regulatory policy but is also consistent with the underlying purpose of the Delaney Clause as enacted in 1958—the assurance that the food supply will be free from any meaningful risk of cancer presented by substances added to food.

For all the foregoing reasons, the agency concludes that it is not inconsistent with the Delaney Clause to permit uses of a carcinogenic color additive when those uses are shown to present a carcinogenic risk that is so trivial, based on extremely conservative statistical analyses, as to be the functional equivalent of no risk at all.

2. The risks from the uses of D&C Red No. 8 and D&C Red No. 9 in externally applied drugs and cosmetics and in ingested drug and cosmetic lip products (as modified by this action) are, in fact, so trivial as to be effectively no risk.

According to the panel's revised risk estimates, the highest lifetime level of risk presented by the externally applied uses of D&C Red No. 8 and D&C Red No. 9 is 1 in 60 million. While the lifetime level of risk presented by the ingested drug and cosmetic lip product uses at 0.1 percent concentrations represents a somewhat higher potential risk, none of the above risks represents an actuarial risk. An actuarial risk is the risk determined by the actual incidence of an event. In contrast, the computed risks are projections based on certain conservative assumptions that ensure that risks are not understated. The assumptions that were relied upon in this computation have been stated previously in the document. The risks from these uses of D&C Red No. 8 and D&C Red No. 9 will not exceed these levels and are likely to be somewhere

between the respective levels and zero. FDA emphasizes that these estimated upper bounds of risk do not mean that 1 in every 60 million people or 1 in every million people will contract cancer as a result of using externally applied drugs and cosmetics or ingested lip products containing the color additives over a lifetime. Rather, in all likelihood, no one will contract cancer as a result of these exposures.

In light of the levels of risk presented by the externally applied drug and cosmetic uses and the ingested drug and cosmetic lip product uses of D&C Red No. 8 and D&C Red No. 9, FDA finds that the uses are safe, that they impose no additional risk of cancer to the public, and that any risk they may present is of no public health consequence. It is in just these circumstances, where there is no meaningful increase in public health protection from applying the strict, literal terms of a legal standard, that the courts have found the *de minimis* doctrine to be applicable. For example, the court in *Monsanto* equated *"de minimis"* with a finding that migration of an indirect food additive is "insignificant" (613 F.2d at 947) in a context where the court clearly recognized that the real question was the toxicity of a particular level of migration.

Furthermore, FDA and other regulatory agencies have, in the past, found higher risks than those presented by D&C Red No. 8 and D&C Red No. 9 to be permissible. For example, in the ongoing SOM rulemaking proceeding, FDA has proposed that an assay method sufficient to detect a carcinogenic residue posing a calculated upper bound risk of 1 in 1 million is appropriate because such a level imposes no additional risk of cancer to the public (see 44 FR 17070, 17093; March 20, 1979). The agency has concluded that as a result of this use of the 1 in 1 million level of risk as far as can be determined in all probability, no one will contract cancer from admittedly carcinogenic residues in edible animal tissue. (See 50 FR 45530, 45541; October 31, 1985.)

In several proceedings involving the agency's policy for carcinogenic impurities in food and color additives, FDA has also found that a risk on the order of a 1 in 1 million lifetime risk is low enough to be considered safe within the meaning of the general safety clause. See, for example, the administrative record compiled in the rulemaking on D&C Green No. 6 (47 FR 14138; April 2, 1982).

Furthermore, in a notice published in the **Federal Register** of December 18, 1985 (50 FR 51551), the agency proposed that methylene chloride when used to decaffeinate coffee is safe, in light of the fact that the potential risk posed by permitted levels of methylene chloride residue in coffee does not exceed 1 in 1 million. In that notice, the agency also suggested that the lifetime risk for the use of methylene chloride to decaffeinate coffee is *de minimis*.

Other Federal agencies have also used a 1 in 1 million level as a basis for regulatory decisionmaking permitting human exposure to carcinogens (Ref. 23). In fact, they have sometimes made regulatory decisions that have allowed a cancer risk greater than 1 in 1 million. The Occupational Safety and Health Administration (OSHA), for example, has focused its regulatory efforts on risks in the workplace that are much higher than 1 in 1 million lifetime level of risk.

For example, under the Occupational Safety and Health Act (OSH Act) (29 U.S.C. 651 et seq.), OSHA issues health standards for the workplace. Before issuing a standard, OSHA must make a formal showing of "significant risk from exposure." Accordingly, OSHA uses quantitative risk assessment to compare the magnitude of risk presented by the various possible levels of exposure to a substance before establishing a permissible exposure limit. In the **Federal Register** of January 14, 1983 (48 FR 1864), OSHA established a new permissible exposure limit for inorganic arsenic after determining the risk of lung cancer death associated with such a level would be 8 cases per 1,000 workers exposed over a working lifetime. The standard was upheld by the Ninth Circuit Court of Appeals in *ASARCO* v. *OSHA*, 746 F.2d 483 (9th Cir. 1984). In a similar action in the **Federal Register** of June 22, 1984 (49 FR 25734), OSHA published a final rule establishing a new permissible exposure limit for ethylene oxide. The new 1 part per million permissible exposure limit represented a risk of 12 to 23 excess deaths per 10,000 workers exposed over a working lifetime.

The Environmental Protection Agency (EPA) in recent years has also relied upon the 1 in 1 million lifetime level as a reasonable criterion for separating high risk problems from low risk problems presented by the wide ranging environmental contaminants EPA must regulate. In the **Federal Register** of November 23, 1984 (49 FR 46294), EPA proposed guidelines for carcinogen risk assessment. The proposal outlined a procedure for characterizing substances based on the experimental weight of evidence of carcinogenicity. For those compounds classified as known or probable human carcinogens, EPA set the 1 in 1 million risk level as the "point of departure" for determining what level of a carcinogen may cause concern.

For example, under the Safe Drinking Water Act (42 U.S.C. 300f et seq.), EPA sets drinking water standards that contain maximum contaminant levels for toxicants, including carcinogens. Maximum contaminant levels for carcinogens that have been promulgated or proposed to date by EPA generally fall into lifetime risk ranges of 1 in 10,000 to 1 in 1 million (Ref. 24). Similarly, EPA recently proposed to establish the 1 in 1 million level as the "point of departure" in determining the level of control for all known and possible carcinogenic constituents compounds resulting from hazardous waste contamination (51 FR 1602; 1635; January 14, 1986). As an alternative, EPA proposed to consider estimates of population in determining the appropriate level of control for each constituent. Thus, if a very large number of people is believed to be potentially exposed to a very potent carcinogenic constituent released from contaminated land disposal units, EPA could decrease the level of risk to as low as 1 in 10 million. If the size of the potentially exposed population is not large, the "point of departure" would remain at the 1 in 1 million level. However, if a small number of people were believed to be exposed to the contaminant, such that the incidence of cancer would be expected to be small from the exposure, EPA would consider increasing the acceptable risk level to 1 in 100,000 or 1 in 10,000.

Although comparisons between the safety decisions made by OSHA and EPA with those made by FDA must be tempered by the fact that the decisions are made under different statutory frameworks, the decisions support the consensus proposition that a lifetime level of 1 in 1 million presents an extremely small risk.

Furthermore, FDA's conclusion that a 1 in 1 million lifetime level represents an insignificant level of risk has not been arrived at hastily. For example, when it first proposed the SOM procedures and criteria on July 19, 1973 (38 FR 19226), the agency stated that an acceptable level of risk for carcinogenic residues in edible animal tissues would be 1 in 100 million. In the **Federal Register** of February 22, 1977 (42 FR 10412), the agency concluded that the 1 in 100 million level was unnecessarily conservative in light of the numerous conservatisms implicit in risk assessment and because the level provided only a minor incremental increase in the degree of confidence

presented by the higher 1 in 1 million level. The agency concluded that the 1 in 1 million level constituted a risk level that one could properly consider to present an insignificant public health concern (see also 44 FR 17070; March 20, 1979). In the most recent **Federal Register** document concerning the SOM rulemaking (50 FR 45530; October 31, 1985), the agency explained that it considered raising the level yet another order of magnitude to 1 in 100,000 but chose not to do so. FDA reasoned that in recent years the 1 in 1 million level has become a benchmark in the evaluation of the safety of carcinogenic compounds administered to food-producing animals. Furthermore, the agency stated that there is currently widespread confidence that this level presents an insignificant risk of cancer. This point is underscored by the fact that every comment on the risk level aspect of the 1979 SOM proposal regarded the 1 in 1 million level as insignificant. In making the decision to retain the 1 in 1 million level for purposes of the SOM proceeding, FDA recognized explicitly that there may be a higher level of risk that is more appropriate to characterize as a "no residue" level, but that in light of the current uncertainties that accompany making a decision as to the most appropriate level of risk, the 1 in 1 million level was the most reasonable and defensible choice (50 FR 45542).

The levels of risk presented by the externally applied and the ingested drug and cosmetic lip product uses of D&C Red No. 8 and D&C Red No. 9 are extremely low. In relation to other risks regulated by FDA and other Federal agencies, these risks are, indeed, trivial.

XIII. Conclusion

Based on the foregoing, FDA concludes that the risk of cancer from the use of D&C Red No. 8 and D&C Red No. 9 in externally applied drugs and cosmetics and in ingested drugs and cosmetic lip products is so low as to be effectively no risk, and that there would be no benefit to the public from prohibiting these uses of the color additives. Further, for the same reasons and because the available information indicates no other safety questions regarding these uses of D&C Red No. 8 and D&C Red No. 9, FDA concludes that the uses of D&C Red No. 8 and D&C Red No. 9 are safe. The agency is amending Part 74 to permanently list D&C Red No. 8 and D&C Red No. 9 for such uses.

By letter dated August 15, 1983, CTFA withdrew the part of its petition requesting permanent listing of D&C Red No. 8 and D&C Red No. 9 for use in mouthwash, dentifrices, and ingested drugs other than ingested drug lip products, without prejudice to a future refiling. (See letter of August 15, 1983, from E. Edward Kavanaugh, CTFA, to Sanford A. Miller.) Because the petitioner has withdrawn that portion of the petition pertaining to use in mouthwash, dentifrices, and ingested drugs, except ingested drug lip products, there is no longer a basis for continued provisional listing of these uses (21 U.S.C. 376, note).

Accordingly, in the absence of a petition for such uses, FDA concludes that (1) the provisional listing of D&C Red No. 8 and D&C Red No. 9 for use in mouthwash, dentifrices, and ingested drugs, except ingested drug lip products, should be terminated under sections 203(a)(2) and (d)(1)(E) of the transitional provisions of the amendments; (2) all certificates heretofore issued for batches of D&C Red No. 8 and D&C Red No. 9, their lakes, and all mixtures containing these color additives for mouthwash, dentifrices, and ingested drugs, except ingested drug lip products, are cancelled as of January 5, 1987; and (3) after that date the addition of D&C Red No. 8 and D&C Red No. 9 to mouthwash, dentifrices, and ingested drugs, except ingested drug lip products, will cause such products to be adulterated within the meaning of sections 501 and 601 of the act (21 U.S.C. 351 and 361) and to be subject to regulatory action. This prohibition applies to use of the straight color additives, their lakes, and mixtures of the color additives and their lakes in mouthwash, dentifrices, and ingested drugs, except ingested drug lip products.

FDA also concludes that the health concern regarding the use of these color additives is such that the current use of the color additives does not represent an acute or imminent hazard. Therefore, the protection of the public health does not require (1) the recall from the market of mouthwash, dentifrices, and ingested drugs, except ingested drug lip products, that contain the color additives; or (2) the destruction of such preparations to which the color additives have already been added.

Manufacturers of new drugs and new animal drugs (including certifiable antibiotics for animal use) that contain D&C Red No. 8 and D&C Red No. 9 for use in mouthwash, dentifrices, and ingested drugs, except ingested drug lip products, may either discontinue use of the color additives or substitute a different color additive in accordance with the provisions of 21 CFR 314.70(c)(1) or 21 CFR 514.8 (d)(3) and (e), as appropriate. If a substitute color additive is used, the manufacturer shall file with FDA a supplemental new drug application or supplemental new animal drug application containing data describing the new composition and showing that the change in composition does not interfere with any assay or other control procedures used in manufacturing the drug, or that the assay and control procedures have been revised to make them adequate. The applicant shall also submit data available to establish the stability of the revised formulation. If the data are too limited to support a conclusion that the drug will retain its declared potency for a reasonable marketing period, the applicant shall submit a commitment to test the stability of marketed batches at reasonable intervals, to submit the data as they become available, and to recall from the market any batch found to fall outside the approved specifications for the drug.

Each sponsor of a notice of claimed investigational exemption for a new drug (IND) or a notice of claimed investigational exemption for a new animal drug (INAD) containing the subject color should promptly amend the IND or INAD to indicate that the color additive has been deleted or a different color additive substituted.

FDA is aware that supplies of alternative color additives may be difficult to obtain immediately. Consequently, labeling of mouthwash, dentifrices, and ingested drugs, except ingested drug lip products, that states that the product contains "artificial color" or that specifically identifies D&C Red No. 8 and D&C Red No. 9 may continue to be used with the uncolored product or products containing alternative colors during the time necessary to obtain supplies of revised labeling or until December 5, 1987, whichever occurs first.

The agency has considered the environmental effects of the termination of the provisional listing for mouthwash, dentifrices, and ingested drugs, except ingested drug lip products. Because FDA's action on this part of the petition will not result in the production or distribution of any substance and, therefore, will not result in the introduction of any substance in the environment, FDA concludes that this action will not have any impact on the quality of the human environment. This action is similar to actions involving human and animal drugs that are excluded from preparation of an environmental assessment under 21 CFR 25.24 (c)(3) and (d)(3) of FDA's final rule implementing the National Environmental Policy Act (50 FR 16636; April 26, 1985).

Notice and public procedure are not necessary prerequisites to promulgating

these regulations because section 203(d)(2) of Pub. L. 86–618 so provides.

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decisions to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

In addition, the agency has also determined under 21 CFR 25.24(b)(3) (50 FR 16636; April 26, 1985) that the action to permanently list D&C Red No. 8 and D&C Red No. 9 for use in ingested drug and cosmetic lip products and externally applied drugs and cosmetics will not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has also determined that Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354) do not apply to actions of this type.

XIV. References

The following information has been placed on file at the Dockets Management Branch (address above) and is available for review in that office between 9 a.m. and 4 p.m., Monday through Friday. The final toxicity study reports, the agency's toxicology evaluations of these studies, and other information relied upon by the agency in reaching its decision are also on file at the Dockets Management Branch for public review.

1. Bus, J. S., CIIT Activities, 3:12:1, 1983.

2. Brown, et al., *Mutation Research*, 66:181, 1979.

3. Muzzall and Cook, *Mutation Research*, 67:1, 1979.

4. Prival, M., and V. Mitchell, *Mutation Research*, 97:103, 1982.

5. OSTP, "Chemical Carcinogens; Notice of Review of the Science and Its Associated Principles," 49 FR 21594–21667 at 21638; May 22, 1984.

6. Report of the Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation of the National Toxicology Program Board of Scientific Counselors, August 17, 1984, p. 214.

7. "Guidelines for Carcinogen Bioassay in Small Rodents," Sontag, J.M., N.P. Page, and U. Saffiotti, DHEW Publication No. (NIH) 76–801.

8. Page, N., "Concepts of Bioassay Program in Environmental Carcinogenesis," *in* "Advances in Modern Toxicology," Chapter 3, "Environmental Cancer," p. 137, Wiley & Sons, 1979.

9. Wong, M.A., and S.M. Oace, "Feeding Pattern and Gastrointestinal Transit Rate of Rats under Different Room Lighting Schedules," *Laboratory Animal Science*, 31:362–365, 1981.

10. Cummings, J. H., "Diet and Transit Through the Gut," Third Kellogg Nutrition Symposium, John Libbey and Co. Ltd., London, pp. 83–95, 1978.

11. Radomski, J.L., "The Absorption, Fate and Excretion of Citrus Red No. 2 (2,5-Dimethoxyphenyl-Azo-2-Naphthol) and Ext. D&C Red No. 14 (1- Xylylazo-2-Naphthol," *Journal of Pharmacology and Experimental Therapeutics*, 134:100–109, 1961.

12. Weisburger, J.H., "Decision Point Approach to Carcinogen Testing," in "Structural Correlates of Carcinogenesis and Mutagenesis," Asher and Zerris, editors, FDA, 1977.

13. Clayson, D.B., "Chemical Carcinogenesis," Little Brown, Boston, p. 264, 1962.

14. Arcos, J., et al., "Chemical Induction of Cancer—Structural Bases and Biological Mechanisms," Vol. II. B., Academy Press, New York, p. 202, 1974.

15. Ward, J.M., et al., "Proliferative Lesions of the Spleen in Male F 344 Rats Fed Diets Containing p-Chloroaniline," *Veterinary Pathology*, 17:200–205, 1980.

16. "Spectroscopic and Radiochemical Analyses of D&C Red No. 9 Samples," Arthur D. Little, Inc., Report, September 9, 1983.

17. Memorandum, Bailey, J. E., "Determination of Unsulfonated Subsidiary Color in Commercial Batches of FD&C Yellow No. 6," CAP 8C0066, November 27, 1985.

18. Richfield-Fratz, N., J.E. Bailey, and C.J. Bailey, "Determination of Unsulfonated Aromatic Amines in FD&C Yellow No. 6 by the Diazotization and Coupling Procedure Followed by Reversed-Phase High-Performance Liquid Chromatography," *Journal of Chromatography Science*, 331:109–123. 1985.

19. Naganuma, et al., *Journal of the Society of Cosmetic Chemistry*, 34:273–284, 1983.

20. Wilson, R., "Risks Caused by Low Levels of Pollution," *Yale Journal of Biology and Medicine*, 51:37, 48, 1978.

21. Haseman, J., et al., "Results From 86 Two-Year Carcinogenicity Studies Conducted by the National Toxicology Program," *Journal of Toxicology and Environmental Health*, 14:621, 634, 1984.

22. Ames, B., "Dietary Carcinogens and Anticarcinogens," *Science*, 221:1256, September 23, 1983.

23. Milvy, P., "A General Guideline for Management of Risk from Carcinogens," *Risk Analysis*, 6:69, 1986.

24. Crouch, E., et al., "The Risks of Drinking Water," *Water Resources Research*, 19:1359, 1983.

25. "Coal Tar Hair Dyes," proposed warning statement, 43 FR 1101, 1103; January 6, 1978.

26. Klaassen, C.D., "Absorption, Distribution and Excretion of Toxicants," *in* "Toxicology, the Basic Science of Poisons," Chapter 3, Edited by Casarett, L.J., and J. Donell, MacMillan Publishing Co., Inc., New York, pp. 26–44, 1975.

XV. Objections

Any person who will be adversely affected by this regulation may at any time on or before January 5, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register.**

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 81

Color additives, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 74, 81, and 82 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. By adding new § 74.1308 to read as follows:

§ 74.1308 D&C Red No. 8.

(a) *Identity.* (1) The color additive D&C Red No. 8 is principally the monosodium salt of 5-chloro-2-[(2-hydroxy-1-naphthalenyl)azo]-4-methylbenzenesulfonic acid (CAS Reg. No. 2092–56–0). To manufacture the additive, 2-amino-5-chloro-4-methylbenzenesulfonic acid is diazotized using sodium nitrite and hydrochloric acid. The diazo compound is coupled with 2-naphthalenol. The color additive is isolated as the sodium salt.

(2) Color additive mixtures for use in ingested drug lip products and externally applied drugs made with D&C Red No. 8 may contain only those diluents that are suitable and that are listed in Part 73 of this chapter as safe for use in color additive mixtures for coloring ingested drug lip products and externally applied drugs.

(b) *Specifications.* D&C Red No. 8 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practice:

Sodium salt of 2-amino-5-chloro-4-methylbenzenesulfonic acid, not more than 0.2 percent.
2-Naphthalenol, not more than 0.2 percent.
Sodium salt of 5-chloro-2-[(4-hydroxy-1-naphthalenyl)azo]-4-methylbenzenesulfonic acid, not more than 1 percent.
Sum of volatile matter (at 135 °C) and water soluble chlorides and sulfates (calculated as sodium salts), not more than 13 percent.
Mercury (as Hg), not more than 1 part per million.
Arsenic (as As), not more than 3 parts per million.
Lead (as Pb), not more than 20 parts per million.
Total color, not less than 87 percent.
Chloroform extractable unsulfonated subsidiary colors, not more than 50 parts per million, calculated as 1-(phenylazo)-2-naphthol.

(c) *Uses and restrictions.* The color additive D&C Red No. 8 may be safely used for coloring ingested drug lip products in amounts not exceeding 0.1 percent by weight of the finished product and externally applied drugs in amounts consistent with current good manufacturing practice.

(d) *Labeling.* The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) *Certification.* All batches of D&C Red No. 8 shall be certified in accordance with regulations in Part 80 of this chapter.

3. By adding new § 74.1309 to read as follows:

§ 74.1309 D&C Red No. 9.

(a) *Identity.* (1) The color additive D&C Red No. 9 is principally the barium salt (1:2) of 5-chloro-2-[(2-hydroxy-1-naphthalenyl)azo]-4-methylbenzenesulfonic acid (CAS Reg. No. 5160–2–1). To manufacture the additive, 2-amino-5-chloro-4-methylbenzenesulfonic acid is diazotized using sodium nitrite and hydrochloric acid. The diazo compound is coupled with 2-naphthalenol, and barium chloride is added as a precipitant. The color additive is isolated as the barium salt.

(2) Color additive mixtures for use in ingested drug lip products and externally applied drugs made with D&C Red No. 9 may contain only those diluents that are suitable and that are listed in Part 73 of this chapter as safe for use in color additive mixtures for coloring ingested drug lip products and externally applied drugs.

(b) *Specifications.* D&C Red No. 9 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practice:

Soluble barium (in dilute HCl) (as $BaCl_2$), not more than 0.05 percent.
Barium salt (1:2) of 2-amino-5-chloro-4-methylbenzenesulfonic acid, not more than 0.2 percent.
2-Naphthalenol, not more than 0.2 percent.
Barium salt (1:2) of 5-chloro-2-[(4-hydroxy-1-naphthalenyl)azo]-4-methylbenzenesulfonic acid, not more than 1 percent.
Sum of volatile matter (at 135 °C) and water soluble chlorides and sulfates (calculated as barium salts), not more than 13 percent.
Mercury (as Hg), not more than 1 part per million.
Arsenic (as As), not more than 3 parts per million.
Lead (as Pb), not more than 20 parts per million.
Total color, not less than 87 percent.
Chloroform extractable unsulfonated subsidiary colors, not more than 50 parts per million, calculated as 1-(phenylazo)-2-naphthol.

(c) *Uses and restrictions.* The color additive D&C Red No. 9 may be safely used for coloring ingested drug lip products in amounts not exceeding 0.1 percent by weight of the finished product and externally applied drugs in amounts consistent with current good manufacturing practice.

(d) *Labeling.* The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) *Certification.* All batches of D&C Red No. 9 shall be certified in accordance with regulations in Part 80 of this chapter.

4. By adding new § 74.2308 to read as follows:

§ 74.2308 D&C Red No. 8.

(a) *Identity and specifications.* The color additive D&C Red No. 8 shall conform in identity and specifications to the requirements of § 74.1308 (a)(1) and (b).

(b) *Uses and restrictions.* The color additive D&C Red No. 8 may be safely used for coloring ingested cosmetic lip products in amounts not exceeding 0.1 percent by weight of the finished product and externally applied cosmetics in amounts consistent with current good manufacturing practice.

(c) *Labeling requirements.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) *Certification.* All batches of D&C Red No. 8 shall be certified in accordance with regulations in Part 80 of this chapter.

5. By adding new § 74.2309 to read as follows:

§ 74.2309 D&C Red No. 9.

(a) *Identity and specifications.* The color additive D&C Red No. 9 shall conform in identity and specifications to the requirements of § 74.1309(a)(1) and (b).

(b) *Uses and restrictions.* The color additive D&C Red No. 9 may be safely used for coloring ingested cosmetic lip products in amounts not exceeding 0.1 percent by weight of the finished

product and externally applied cosmetics in amounts consistent with current good manufacturing practice.

(c) *Labeling requirements.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) *Certification.* All batches of D&C Red No. 9 shall be certified in accordance with regulations in Part 80 of this chapter.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

6. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

7. In § 81.1 *Provisional lists of color additives* by removing the entries for "D&C Red No. 8" and "D&C Red No. 9" in paragraph (b).

8. In § 81.10 by adding new paragraph (t) to read as follows:

§ 81.10 Termination of provisional listings of color additives.

* * * * *

(t) *D&C Red No. 8 and D&C Red No. 9.* In the absence of a petition to list D&C Red No. 8 and D&C Red No. 9 for mouthwash, dentifrices, and ingested drugs, except ingested drug lip products, there no longer exists a basis for provisional listing for such uses. Accordingly, the Commissioner of Food and Drugs hereby terminates the provisional listings of D&C Red No. 8 and D&C Red No. 9 for use in mouthwash, dentifrices, and ingested drugs, except ingested drug lip products, effective January 5, 1987.

9. In § 81.25 by removing the entries for "D&C Red No. 8" and "D&C Red No. 9" in paragraphs (a)(1) and (c)(1), by removing and reserving paragraph (b)(1)(ii), and by revising paragraphs (a)(2), (b)(2), and (c)(2), to read as follows:

§ 81.25 Temporary tolerances.

* * * * *

(a) * * *

(2) Combinations of the color additives named in paragraph (a)(1) of this section may be used in a lipstick or other lip cosmetic, provided the individual temporary tolerance is not exceeded.

* * * * *

(b) * * *

(2) Combinations of the color additives named in paragraph (b)(1) of this section may be used, provided the individual temporary tolerance is not exceeded.

(c) * * *

(2) Combinations of the color additives named in paragraph (c)(1) of this section may be used in a product, provided the individual temporary tolerance is not exceeded.

§ 81.27 [Amended]

10. In § 81.27 *Conditions of provisional listing* by removing the entries for "D&C Red No. 8" and "D&C Red No. 9" in paragraph (d).

11. In § 81.30 by adding new paragraph (s), to read as follows:

§ 81.30 Cancellation of certificates.

* * * * *

(s)(1) Certificates issued for D&C Red No. 8 and D&C Red No. 9, their lakes, and all mixtures containing these color additives are canceled and have no effect as pertains to their use in mouthwash, dentifrices, and ingested drugs, except ingested drug lip products, after January 5, 1987, and use of these color additives in the manufacture of mouthwash, dentifrices, and ingested drugs, except ingested drug lip products, after this date will result in adulteration.

(2) The agency finds, on the basis of the scientific evidence before it, that no action has to be taken to remove from the market mouthwash, dentifrices, and ingested drugs to which the color additives were added on or before January 5, 1987. Ingested drug lip products, however, are regulated for use in §§ 74.1308 and 74.1309.

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

12. The authority citation for 21 CFR Part 82 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

13. By revising § 82.1308 to read as follows:

§ 82.1308 D&C Red No. 8.

The color additive D&C Red No. 8 shall conform in identity and specifications to the requirements of § 74.1308(a)(1) and (b) of this chapter. D&C Red No. 8 is restricted to use in ingested drug and cosmetic lip products at a level of use of 0.1 percent and in externally applied drugs and cosmetics in amounts consistent with current good manufacturing practice. D&C lakes shall be made only from batches of D&C Red No. 8 previously certified in accordance with the requirements of § 74.1308(a)(1) and (b) of this chapter.

14. By revising § 82.1309 to read as follows:

§ 82.1309 D&C Red No. 9.

The color additive D&C Red No. 9 shall conform in identity and specifications to the requirements of § 74.1309(a)(1) and (b) of this chapter. D&C Red No. 9 is restricted to use in ingested drug and cosmetic lip products at a level of use of 0.1 percent and in externally applied drugs and cosmetics in amounts consistent with current good manufacturing practice. D&C lakes shall be made only from batches of D&C Red No. 8 or D&C Red No. 9 previously certified in accordance with the requirements of §§ 74.1308(a)(1) and (b) and 74.1309(a)(1) and (b) of this chapter.

Dated: November 29, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86–27250 Filed 12–4–86; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 81

[Docket No. 76N–0366]

Provisional Listing of FD&C Yellow No. 6, D&C Red No. 8, and D&C Red No. 9; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red No. 8 and D&C Red No. 9 for use as color additives in drugs and cosmetics and for the provisional listing of FD&C Yellow No. 6 for use as a color additive in food, drugs, and cosmetics. The new closing date will be February 3, 1987. FDA has decided that this postponement is necessary to provide time for the receipt and evaluation of any objections submitted in response to the final rule, published elsewhere in this issue of the **Federal Register**, permanently listing the drug and cosmetic uses of D&C Red No. 8 and D&C Red No. 9 and the final rule published in the **Federal Register** of November 19, 1986 (51 FR 41765), permanently listing the food, drug, and cosmetic uses of FD&C Yellow No. 6.

EFFECTIVE DATE: December 5, 1986, the new closing date for FD&C Yellow No. 6, D&C Red No. 8, and D&C Red No. 9 will be February 3, 1987.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF–330),

Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of December 5, 1986, for the provisional listing of FD&C Yellow No. 6, D&C Red No. 8, and D&C Red No. 9 by regulation published in the **Federal Register** of October 6, 1986 (51 FR 35511). FDA extended the closing date for these color additives until December 5, 1986, to provide time for the preparation and publication of appropriate **Federal Register** documents. The regulation set forth below will postpone the December 5, 1986, closing date for the provisional listing of these color additives until February 3, 1987.

In the **Federal Register** of June 6, 1986 (51 FR 20786), FDA announced that the agency had essentially completed its review and evaluation of available information relevant to the use of these color additives in food, drugs, and cosmetics. The agency concluded that the drug and cosmetic uses of D&C Red No. 8 and D&C Red No. 9, and the food, drug, and cosmetic uses of FD&C Yellow No. 6 are safe. Thus, the agency has permanently listed the color additives for these uses.

The two final rules referred to above provide 30 days for any person who will be adversely affected by these final rules to file written objections. The postponement of the closing date for 60 days will provide time for receipt and evaluation of objections or requests for a hearing submitted in response to these final rules.

FDA believes that it is reasonable to postpone the closing date for these color additives until February 3, 1987, to provide time for the receipt and evaluation of any objections. FDA concludes that this extension is consistent with the public health and the standards set forth for continuation of provisional listing in *McIlwain* v. *Hayes*, 690 F.2d 1041 (D.C. Cir. 1982).

Because of the shortness of time until the December 5, 1986, closing date, FDA concludes that notice and public procedure on this regulation are impracticable and that good cause exists for issuing the postponement as a final rule and for an effective date of December 5, 1986. This regulation will permit the uninterrupted use of these color additives until further action is taken. In accordance with 5 U.S.C. 553 (b) and (d) (1) and (3), this postponement is issued as a final regulation, effective on December 5, 1986.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1058 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. In § 81.1 *Provisional lists of color additives* by revising the closing dates for "FD&C Yellow No. 6" in paragraph (a) and for "D&C Red No. 8" and "D&C Red No. 9" in paragraph (b) to read "February 3, 1987."

§ 81.27 [Amended]

3. In § 81.27 *Conditions of provisional listing* by revising the closing dates for "FD&C Yellow No. 6," "D&C Red No. 8," and "D&C Red No. 9," in paragraph (d) to read "February 3, 1987."

Dated: November 29, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86–27249 Filed 12–4–86; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 201

[Docket No. 84N–0113]

Sulfiting Agents; Labeling in Drugs for Human Use; Warning Statement

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its drug labeling regulations to require that a warning statement be included in the labeling of all prescription drugs for human use to which sulfites have been added to the final dosage form. FDA believes that this action is necessary because of the evidence that adverse reactions to sulfites may occur in certain persons, especially asthmatics. This warning statement is intended to aid health care professionals in patient management by providing them with the information necessary to avoid prescribing sulfite-containing drugs to patients known to be sulfite sensitive.

EFFECTIVE DATE: June 3, 1987 for all affected products initially introduced or initially delivered for introduction into interstate commerce. For additional information concerning the effective date see "**EFFECTIVE DATE**" heading appearing in the preamble of this document.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Drugs and Biologics (HFN–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8046.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of November 19, 1985 (50 FR 47558), FDA proposed to require that a warning statement be included in the labeling of all prescription drug products intended for human use that contain sulfites. FDA proposed this rule in response to reports that certain people, especially asthmatics, experience serious allergic-type reactions after exposure to drug products that contain sulfites. The required warning statement would provide health care professionals with the information necessary to avoid prescribing such drug products to people known to be sulfite sensitive.

In the preamble to the proposed rule, the agency discussed: (1) The widespread use of sulfites as antioxidants in a variety of prescription drug products; (2) the petition from the Center for Science in the Public Interest (CSPI) requesting that the agency ban the use of sulfites in drug products or require a warning label on drug products containing sulfites; and (3) the adverse reports submitted to the agency and adverse reactions cited in the medical literature indicating that sulfites can precipitate mild to life-threatening hypersensitivity reactions.

The agency acknowledged that people who want to avoid sulfite-containing drug products should be given sufficient information to do so, but disagreed with the petitioner that a complete prohibition against their use was justified. The proposed rule stated that because sulfites serve a necessary public health function by maintaining the potency of certain medications, some of which may be life saving, any prohibition against their use could be justified only if acceptable alternatives were available. The agency is not aware of a generally suitable substitute for sulfites at this time.

FDA also described in the proposal several initiatives begun by the drug industry relating to inactive ingredients, such as sulfites, in drug products. Both

the Proprietary Association, representing manufacturers of nonprescription drug products, and the Pharmaceutical Manufacturers Association (PMA), representing prescription drug product manufacturers, initiated voluntary inactive ingredient labeling programs. These programs called for the labeling of drug products produced after December 1985 to declare the presence of inactive ingredients such as sulfites. As stated in the proposal, these initiatives should result in inactive ingredient labeling for the majority of drug products sold in the United States. Because of these voluntary efforts, the agency concluded that Federal regulation to require the listing of sulfites on the label of over-the-counter (OTC) or prescription drug products would not be needed at this time. In regard to prescription drugs, however, the proposal contended that the label declaration of sulfite alone was not sufficient and that a warning label should be placed on sulfite-containing prescription drug products to help ensure that health care professionals are alerted to the problem. Therefore, in addition to the voluntary listing of sulfites in the product label, FDA proposed that a specific statement on the possibility of adverse reactions associated with use be included in the "Warning" section of prescription drug product labeling to bring this fact to the attention of the physician. The preamble to the proposed rule stated that the regulation would apply to any prescription drug product to which sulfites are added as an inactive ingredient, regardless of the amount added.

Highlights of the Final Rule

As discussed below, most of the comments received supported the proposed warning statement for prescription drug products, although many of these comments urged the agency to include a warning on OTC drug products as well. Several of the comments favoring the proposal asked for clarification of statements in the preamble or suggested minor modifications to the proposed warning statement. About one-fourth of the comments received, however, thought that the agency's proposed action was not sufficient in view of the dangers posed by sulfites and stressed that sulfites should be banned from drug products altogether.

As explained in the preamble to the proposed rule, the agency believes that adverse reactions associated with sulfites warrants inclusion of a "warning" statement in professional labeling. However, the agency also believes that sulfites serve a necessary public health function, and that a complete prohibition against their use cannot now be justified. Therefore, the final regulation closely parallels the proposal.

The final rule requires the following statement in prescription drug product labeling, "Contains (*insert the name of the sulfite, e.g., sodium metabisulfite*), a sulfite that may cause allergic-type reactions including anaphylactic symptoms and life-threatening or less severe asthmatic episodes in certain susceptible people. The overall prevalence of sulfite sensitivity in the general population is unknown and probably low. Sulfite sensitivity is seen more frequently in asthmatic than in nonasthmatic people." The agency has deleted the words "hives," "itching," and "wheezing" from the codified language of the final rule because these reactions are included in the terms above.

In response to comments received on the proposal, this final rule and preamble contain the following additional changes: (a) Clarification that the regulation is intended to apply to all prescription drug products to which sulfites are added as an inactive ingredient, and (b) inclusion of a separate warning statement for epinephrine products containing sulfites when the products are indicated for treating certain emergency situations.

Comments

The agency received 208 comments on the proposed rule from industry, trade associations, State and local agencies, consumer groups, health professional organizations, individual health professionals and individual consumers, and an FDA Ad Hoc Advisory Committee. On the basis of the information in the proposal and a review of the comments and other information available to the agency on sulfites, the agency believes that encouraging voluntary labeling programs for OTC drug products designed to provide sulfite-sensitive individuals with the necessary information to avoid sulfite-containing drug products is preferable to a mandated Federal program with the same purpose. For prescription drug products, however, the agency continues to believe that a warning statement is needed in the labeling of all prescription drug products containing sulfites to aid physicians in treating known sulfite-sensitive patients with the most appropriate therapies. Comments received are discussed and responded to below.

1. Several comments, while agreeing with the agency's proposed action, suggested that the agency clarify whether the intent of the proposal was to require a warning on all prescription drug products containing sulfites even in trace amounts, or only on those products to which the sulfites are added directly as inactive ingredients. Some of these comments further suggested that the agency establish a threshold level for sulfites in prescription drugs and that the warning label requirement would become applicable only if this level were exceeded. The comments argued that without appropriate clarification most prescription drug products would bear the proposed warning statement thereby diluting its effectiveness and benefits.

The agency's intent in the proposed rule was to require the sulfite warning labeling on all prescription drug products to which sulfites were added as an inactive ingredient, regardless of the amount. The agency did not attempt to establish a threshold level for sulfites that would require the warning because biological threshold levels in sensitive individuals are unknown. As several comments pointed out, many drug products contain low levels of sulfites because one or more of the raw materials used in the production of the drug product contain sulfites. For example, the gelatins used in the manufacture of hard gelatin capsules often contain sulfites, as do the starches used in the manufacture of tablets. The result is that many drug products that have not had sulfites added as inactive ingredients may nevertheless contain some level of sulfite from indirect sources. As described below, the agency's proposal, and thus this final rule, would not apply to such products.

The requirement for the warning labeling applies only to prescription drug products to which sulfites have been directly added as an inactive ingredient. The agency does not believe that it has enough information on indirect sources of sulfites in prescription drug products to warrant extending the warning to those products. To provide the agency with sufficient information to examine this issue further as may be necessary, FDA is requesting that industry, trade associations, consumer groups, health professionals, and other interested persons make available to the agency any information that they have relating to indirect sources of sulfites in prescription drug products, including the number of drug products that would be involved, the levels of sulfites that are present from indirect sources, and methods for

detecting sulfites in drugs. The information should be submitted, under Docket No. 84N-0113, to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

2. Several comments from consumer groups and State agencies, while supporting the proposal, stated that the warning statement should be on the prescription package that is given to the consumer at the time of purchase.

The agency disagrees with the comments that FDA should require a sulfite warning on the package dispensed by the pharmacist. The primary purpose of the sulfite warning is to aid physicians in patient management by providing physicians with information necessary to avoid prescribing sulfite-containing drugs to known sulfite-sensitive persons. In the past, FDA has not normally required this type of information to be placed by pharmacists on individually prescribed products (e.g., FD&C Yellow No. 5; 21 CFR 201.20). However, the agency would not object to pharmacists attaching a warning statement to sulfite-containing drug products.

3. One comment from industry questioned whether a prescription drug product may be labeled "sulfite free" if no detectable level of sulfite is found in the product by current assay methods.

FDA will not object to prescription drug product labeling bearing a truthful statement informing the physician that there is no sulfite in the product, so long as the statement is informational and accurate. The agency acknowledges that labeling a product "sulfite free" could be helpful to persons who wish to avoid sulfites. However, the burden of proof for the accuracy of the label statement rests on the manufacturer. The agency, therefore, cautions manufacturers who decide to label their products as "sulfite free" to be certain that their products do not contain either directly added sulfite or detectable levels of sulfites from indirect sources when tested by current state-of-the-art methods. The presence of sulfites in a product labeled as "sulfite free" would cause the product to be misbranded.

4. One comment argued that because no adverse reactions have been reported in the medical literature for oral prescription drug products, these products should not be required to contain the warning statement.

The agency disagrees with this comment. Although the agency is not aware of any adverse reaction reports involving oral prescription drug products, the potential for reaction from sulfites administered orally has been amply demonstrated in a number of studies. For example, numerous patients, when challenged with metabisulfite in a capsule form, showed a significant fall in pulmonary function and severe symptoms requiring treatment (50 FR 47559; November 19, 1985). The agency believes that it can be concluded from these studies that oral drug products containing sulfites may cause allergic reactions. On the basis of this accumulated evidence, the agency is requiring that this warning statement be included in the labeling of all dosage forms of prescription drug products that contain added sulfites.

5. One comment suggested that the sulfite warning should be "boxed" or "highlighted" for prominence on the prescription drug package. The comment stated that the sulfite warning could be easily overlooked by health care professionals if the warning is not highlighted.

Under § 201.57(e) (21 CFR 201.57(e)), which lists specific requirements on content and format of labeling for human prescription drugs, the agency has the authority to require a "boxed" warning on prescription drug packages for special problems, particularly those that may lead to death or serious injury. The intent of the box is to draw special attention to the warning to assure that it will be noted by the physician. The agency's policy is to use restraint in requiring warnings to be boxed because overuse of the box will ultimately lead to reducing its effect. In the case of sulfites, the agency has taken steps, in addition to the warning in the labeling, to publicize the problem. FDA has published several articles in the *FDA Drug Bulletin*, which were mailed to health care professionals to increase their overall awareness of adverse reactions to sulfite-containing drugs administered to sulfite-sensitive persons. The agency is considering updating these articles in future issues of the *FDA Drug Bulletin*. Articles in the lay press and various professional journals have covered the subject to some extent. Therefore, there is a general awareness of the fact that sulfites can cause severe reactions in sulfite-sensitive persons. Having taken all of these factors into consideration, the agency has concluded that boxing the warning in the labeling of prescription drug products is not necessary to assure that physicians or other health care professionals will note the warning. Therefore, the suggestion in the comment is rejected.

6. One comment suggested that the required sulfite warning be revised to read "may contain" rather than "contains" sulfites. This wording change would allow prescription drug manufacturers flexibility in switching from one supplier of raw materials to another that may or may not contain sulfite.

The requirement for the warning statement applies only to drug products that contain sulfites that have been added to the product as an inactive ingredient. The warning is not required when the sulfite is from an indirect source as described in the comment.

7. Two comments stated that the amount of sulfite in a prescription drug product should be listed in the labeling because some patients demonstrate a dose-dependent relationship to sulfites. One comment further stated that knowledge of sulfite levels would permit both physicians and consumers to make more informed choices of medications that could be critical for sulfite-sensitive patients.

The agency does not believe there are sufficient data to demonstrate the usefulness of listing the quantity of directly added sulfites in prescription drug products. Although there are individual cases in which a dose-dependent response can be demonstrated, patients have been known to react differently to a specific dose of sulfite on different occasions. Consequently, an individual patient's tolerance may not necessarily be well established. The agency emphasizes that the intent of the warning statement is to alert the physician to the presence of sulfites so that the physician can avoid prescribing the drug product to sulfite-sensitive patients. In many instances alternative medications are available that do not contain sulfites. For these reasons, the agency is not requiring that the quantity of sulfites be listed in the labeling, although manufacturers are of course free to include the information.

8. One comment asked that epinephrine for injection be exempted from requiring a sulfite warning when prescribed for emergency situations. The comment emphasized that epinephrine for injection is a life-saving therapy for allergic emergencies and is not known to cause an allergic reaction of its own due to the sulfites present in the product.

The agency agrees with the comment that epinephrine for injection is a life-saving therapy for allergic emergencies. Sulfites are generally added to epinephrine products to maintain the potency. Health care professionals should not be deterred from using sulfite-containing epinephrine for injection in life-threatening emergency situations, even for patients known to be sulfite sensitive. Accordingly, the agency is amending the final rule by

adding an alternate warning statement in § 201.22(c) (21 CFR 201.22(c)) to inform health care professionals that the benefits of using injectable epinephrine that contains sulfite for the treatment of allergic-type reactions as well as other emergency situations outweigh possible disadvantages.

9. Sixty-three comments requested that a sulfite warning be required on OTC drug products, claiming that voluntary labeling efforts have not worked in the past. A number of these comments pointed out that there appears to be an inconsistency in the agency's rationale in the proposed rule for not including such a warning on OTC products while requiring the warning on all prescription drug products. As the comments noted, the agency's rationale for not including OTC drug products in the proposed rule was the fact that the agency is unaware of any adverse reaction from sulfites in OTC drug products. The proposal also stated that the agency is not aware of any adverse reactions from oral prescription drug products but determined that they should require a warning statement because of their potential for adverse reactions.

The agency believes that labeling for OTC drug products and prescription drug products should be treated differently. The warning is necessary in the labeling for prescription drugs to alert the prescriber that the product may cause allergic-type reactions in certain susceptible persons. The warning may, for example, increase the likelihood that before prescribing the drug a physician will ask the patient whether the patient has a known sulfite sensitivity. Simply declaring the presence of sulfites may not be enough to alert the prescriber to the potential for allergic-type reactions. In the case of OTC drugs, however, unlike prescription drugs, the person using the drug receives the package labeling for the product. The person who has been determined to be susceptible to sulfite allergic-type reactions presumably is aware of this sensitivity and is accustomed to taking precautions to avoid using sulfite-containing products. Warnings are probably not necessary for such people provided that the presence of sulfites is declared in the ingredient statement of the package labeling.

As stated in the proposed rule, the Proprietary Association, representing 85 companies that account for 90 percent of all OTC drugs marketed in the United States, has initiated a labeling program under which its member firms will voluntarily list all inactive ingredients. The program called for the labeling of OTC products manufactured by its members after December 1, 1985, to list the presence of inactive ingredients, such as sulfites. Since publication of the proposal, the association has informed the agency that according to its surveys, few OTC products contained sulfites and that over the past year, many have been reformulated to omit this ingredient. Moreover, the association also noted that, as of July 1, 1986, all 20 sulfite-containing products produced by member companies list sulfites in the inactive ingredient labeling section of the product label (see July 21, 1986, letter from the Proprietary Association; filed under Docket No. 84N-0113).

10. Forty-four comments asked that the agency either ban sulfites from all drug products or at least from all drug products used to treat asthma.

The agency disagrees with this comment. Because sulfites serve a necessary public health function by maintaining the potency of certain medications, some of which may be life saving, prohibiting sulfite use in drug products would be justified only if acceptable alternatives were available. The agency is not aware of any generally suitable substitute for sulfites in prescription drug products.

11. Five comments asked FDA to encourage pharmaceutical companies to develop substitutes for sulfites in drugs or to use ascorbic acid as a replacement for sulfites.

Currently, there is no general replacement for sulfites. Moreover, except for ascorbic acid, alternative antioxidants have not had wide exposure and could pose greater safety problems than sulfites. However, the agency encourages pharmaceutical manufacturers to find alternative antioxidants that are shown to maintain a stable and acceptable drug product.

12. One comment asked that the agency design educational programs to increase awareness among health care professionals of potential adverse reactions to sulfite-containing drugs.

The agency has published several articles in the *FDA Drug Bulletin*, which were mailed to health care professionals to increase the overall awareness of adverse reactions to sulfites in certain persons and to provide information necessary to avoid prescribing sulfite-containing drugs to sulfite-sensitive persons. The agency is considering updating these articles in future issues of the *FDA Drug Bulletin*.

13. One comment stated that the agency should monitor and study adverse reactions to sulfites in OTC products.

The agency has an ongoing program monitoring the adverse drug reactions of all new drugs, which includes most prescription drugs and some OTC drug products. Under § 314.80 (21 CFR 314.80), manufacturers of all approved new drug products or drugs approved for marketing under section 505 of the Federal Food, Drug, and Cosmetic Act must inform the agency of adverse drug experience that may be related to the use of their drug products. In the **Federal Register** of July 3, 1986 (51 FR 24476), the agency published a final regulation requiring the reporting of adverse drug experiences for all prescription drug products that are not the subject of approved new drug applications. The agency does not have a formal procedure for monitoring adverse reactions to OTC drugs that are not new drugs, but such reactions do come to the attention of the agency in journal articles and from consumers. Information from these sources is evaluated in the same manner as other adverse drug reaction reports.

Effective Date

Labeling for prescription drug products for human use containing sulfite added as an inactive ingredient, and initially introduced or initially delivered for introduction into interstate commerce on or after June 3, 1987, is required to contain the appropriate warning statement specified in either 21 CFR 201.22 (b) or (c).

The use of sulfite(s) in a human prescription drug product initially introduced or initially delivered for introduction into interstate commerce on or after June 3, 1987, would cause the drug to be misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352) if its labeling failed to contain a required warning statement.

Manufacturers of drug products, including approved new drugs, are encouraged to revise their labeling to conform to the final rule at the earliest possible time. In accordance with 21 CFR 314.70(c), such changes for new drugs may be placed in effect upon submission of a supplemental application, and need not wait for prior approval from the agency.

Economic Assessment

The agency has reexamined the regulatory impact and regulatory flexibility implications of the final regulation in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). The agency has estimated that the regulation would generate costs that are well below the thresholds that signify a major rule and, thus, the final regulation

does not require a regulatory impact analysis.

FDA's Center for Drugs and Biologics estimates that there are approximately 1,100 prescription drug products currently marketed which contain an added sulfite. The final regulation would require a one-time addition to existing prescription drug product professional labeling—adding a warning statement.

FDA estimates that a drug manufacturer would incur label printing and redesign expenses that include typesetting the warning statement, graphics redesign to position the warning statement on the labeling, and preparing a new negative. FDA estimates that these one-time labeling changes would cost a pharmaceutical manufacturer on an average approximately $60 per drug product. Thus, the total cost to manufacturers of complying with the final regulation would be $66,000 ($60×1,100).

FDA also certifies that the final regulation would not have a significant economic impact on a substantial number of small entities and, thus, does not require a regulatory flexibility analysis. Although many of the manufacturers involved are small firms, the costs incurred by these small entities would fall short of the threshold required for a regulatory flexibility analysis.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 201

Drugs; Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act, Part 201 is amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR Part 201 is revised to read as follows:

Authority: Secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended (21 U.S.C. 321, 352, 355, 371); 21 CFR 5.10 and 5.11.

2. In Subpart A by adding new § 201.22 to read as follows:

§ 201.22 Prescription drugs containing sulfites; required warning statements.

(a) Sulfites are chemical substances that are added to certain drug products to inhibit the oxidation of the active drug ingredient. Oxidation of the active drug ingredient may result in instability and a loss of potency of the drug product. Examples of specific sulfites used to inhibit this oxidation process include sodium bisulfite, sodium metabisulfite, sodium sulfite, potassium bisulfite, and potassium metabisulfite. Recent studies have demonstrated that sulfites may cause allergic-type reactions in certain susceptible persons, especially asthmatics. The labeling for any prescription drug product to which sulfites have been added as an inactive ingredient, regardless of the amount added, must bear the warning specified in paragraph (b) or (c) of this section.

(b) The labeling required by §§ 201.57 and 201.100(d) for prescription drugs for human use containing a sulfite, except epinephrine for injection when intended for use in allergic or other emergency situations, shall bear the warning statement "Contains (*insert the name of the sulfite, e.g., sodium metabisulfite*), a sulfite that may cause allergic-type reactions including anaphylactic symptoms and life-threatening or less severe asthmatic episodes in certain susceptible people. The overall prevalence of sulfite sensitivity in the general population is unknown and probably low. Sulfite sensitivity is seen more frequently in asthmatic than in nonasthmatic people." This statement shall appear in the "Warnings" section of the labeling.

(c) The labeling required by §§ 201.57 and 201.100(d) for sulfite-containing epinephrine for injection for use in allergic emergency situations shall bear the warning statement "Epinephrine is the preferred treatment for serious allergic or other emergency situations even though this product contains (*insert the name of the sulfite, e.g., sodium metabisulfite*), a sulfite that may in other products cause allergic-type reactions including anaphylactic symptoms or life-threatening or less severe asthmatic episodes in certain susceptible persons. The alternatives to using epinephrine in a life-threatening situation may not be satisfactory. The presence of a sulfite(s) in this product should not deter administration of the drug for treatment of serious allergic or other emergency situations." This statement shall appear in the "Warnings" section of the labeling.

Dated: November 6, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 86-27319 Filed 12-4-86; 8:45 am]

BILLING CODE 4160-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: The United States Information Agency has utilized alien employees recruited abroad and within the United States for service in the United States as foreign language translators, narrators, producers and editors. Historically, these aliens were employed by the Voice of America and by the Press and Publication Service of the Agency. With the inauguration of a worldwide television service known as WORLDNET and some regional television programs, the Office of Television and Film Service will also need foreign language services by alien employees. The rule change will permit that Office to recruit alien employees and to assure their service within the United States under the J–1 Visa. The rule change will also enable any other bureau or office of the Agency to employ aliens and to utilize the J–1 Visa for the purpose without need of further change in regulation.

EFFECTIVE DATE: The rule change shall become effective December 5, 1986.

FOR FURTHER INFORMATION CONTACT: Richard L. Fruchternan, Assistant General Counsel, United States Information Agency, Room 700, 301 Fourth Street SW., Washington, DC 20547, (202) 485–7976.

SUPPLEMENTARY INFORMATION: The United States Information Agency has utilized alien employees recruited abroad and within the United States for service in the United States as foreign language translators, narrators, producers and editors. Historically, these aliens were employed by the Voice of America and by the Press and Publication Service of the Agency. With the inauguration of a worldwide television service known as WORLDNET and some regional television programs, the Office of Television and Film Service will also need foreign language services by alien employees. The rule change will permit that Office to recruit alien employees and to assure their service within the United States under the J–1 Visa. The rule change also will enable any other bureau or office of the Agency to employ aliens and to utilize the J–1 Visa for that purpose without need of further change in regulation.

The provisions of section 1474 of Title 22 of the United States Code, as amended, state, inter alia, that in carrying out his functions the Director of the Agency may:

(1) Employ, without regard to the civil service and classification laws, aliens within the United States and abroad for service in the United States relating to the translation or narration of colloquial speech in foreign languages or the preparation and production of foreign language programs when suitably qualified United States citizens are not available, and aliens so employed abroad may be admitted to the United States, if otherwise qualified, as nonimmigrants under section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) for such time and under such conditions and procedures as may be established by the Director of the International Communication Agency and the Attorney General;

The rule change is made pursuant to this authority. Consequently, the Agency does not deem it necessary or appropriate to publish a notice of proposed rulemaking with the opportunity for the public to comment.
E.O. 12291 Federal Regulations

USIA has determined that this is not a major rule for the purpose of E.O. 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 22 CFR Part 514

Cultural Exchange Programs.

Accordingly, Part 514 of Title 22 of the Code of Federal Regulations is amended as follows:

PART 514—EXCHANGE VISITOR PROGRAM

1. The authority citation for 22 CFR Part 514 is revised to read as follows:

Authority: Sec. 804(1), United States Information and Educational Exchange Act of 1948, as amended (86 Stat. 493, as amended; 22 U.S.C. 1474(1), as amended; Pub. L. 87–256, 75 Stat. 527, 534, 535 (8 U.S.C. 1101, 1182, 1258, and 22 U.S.C. 2452); Pub. L. 97–241, 96 Stat. 291; 66 Stat. 166, 182, 184, 204 (8 U.S.C. 1101(a)(15)(J), 1182(e), 1182(j), 1258); Pub. L. 91–225, 84 Stat. 116, 117 (8 U.S.C. 1101, 1182); Reorg. Plan No. 2 of 1977; E.O. 12048 of March 27, 1978; USIA Delegation Order No. 85–5 (50 FR 27393).

2. Section 514.23(a)(1)(viii) is revised to read as follows:

§ 514.23 General limitations of stay.

(a) * * *

(1) * * *

(viii) Alien employees of the United States Information Agency engaged in the translation of broadcast narration of foreign languages or the preparation and production of foreign language programs—ten years, and such additional periods of time as the Director of the United States Information Agency may from time to time determine in individual cases.

* * * * *

Dated: October 21, 1986.

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 86-27301 Filed 12-4-86; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 232 and 235

[Docket No. R-86-1315; FR-2313]

Mortgage Insurance—Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on section 232 (Mortgage Insurance for Nursing Homes) and on section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for these programs into line with competitive market rates.

EFFECTIVE DATE: November 24, 1986.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755-7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been lowered from 9.50 percent to 9.00 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (l) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small decrease in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 27, 1986 (51 FR 38424) pursuant to Executive

Order 12291 and the Regulatory Flexibility Act.

(The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120)

List of Subjects

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—Health, Loan programs—Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs—housing and community development.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

1. The authority citation for 24 CFR Part 232 continues to read as follows:

Authority: Sections 211, 232, National Housing Act (12 U.S.C. 1715b, 1715w); sec. 7(d), Department of Housing and Urban Development (42 U.S.C. 3535(d)).

2. In § 232.560, paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 9.00 percent per annum, except that where an application for commitment was received by the Secretary before November 24, 1986, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

3. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Secs. 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 9.00 percent per annum, except that where an application for commitment was received by the Secretary before November 24, 1986, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

5. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after November 24, 1986, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 9.00 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Dated: November 24, 1986.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 86-27353 Filed 12-4-86; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Boston, MA Reg. CCGD1-86-20]

Safety Zone Regulation; Jenny Dock, Chelsea River, Boston Inner Harbor, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rules.

SUMMARY: The Coast Guard is establishing a safety zone on the waters of the Chelsea River, Boston Inner Harbor. The safety zone starts at a line across the Chelsea River 100 yards downstream of the Chelsea Street Highway Drawbridge and ends at a line drawn across the Chelsea River at the southwestern limit of the Mobil Oil Terminal in East Boston, MA. The safety zone encompasses the Chelsea River from bank to bank. This safety zone abuts an existing safety zone centered about the Chelsea Street Highway Drawbridge (33 CFR 165.120). On the evening of 3 November 1986 approximately 125 feet of the sea wall, tank farm containment bulkhead, and embankment at the Northeast Petroleum Marginal Street Terminal (locally referred to as the Jenny Dock) collapsed into the Chelsea River. The terminal is located on the Chelsea, MA side of the Chelsea River just downstream of the Chelsea Street Highway Drawbridge. The safety zone is needed to protect vessels passing in the vicinity of the terminal and to protect remaining sections of the terminal sea wall from damage. The hazard is due to the presence of concrete slabs that have fallen from the sea wall into the Chelsea River. Until it is recoverd, this rubble presents a potential hazard to vessels passing through the area. Until the missing section of sea wall can be replaced, the remaining structure is more vulnerable to erosion by water. This condition would be aggravated by large vessels passing through the area at a full 35 foot draft because of the bank and bottom effect expected in a waterway such as this. Reconstruction of the sea wall will require mooring of construction barges at the site, constricting the waterway even further. Navigation of vessels through this safety zone is prohibited unless the conditions established in this regulation are met or unless passage deviating from these conditions is specifically authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation is effective November 3, 1986. This regulation will terminate when the repairs to the sea wall at the Jenny Dock have been completed and construction vessels have been removed from the site, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LCDR Michael "A" Wade, Port Operations Officer, USCG Marine Safety Officer Boston, MA (617) 565-9000.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent further damage to the Jenny Dock sea wall and to minimize the opportunity for damage to vessels transiting the area.

Drafting Information

The drafters of this regulation are LCDR Michael "A" Wade, Project Officer for the Captain of the Port, and LCDR James M. Collin, Project Attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The Chelsea River was closed to navigation by Captain of the Port Boston, MA immediately following the sea wall collapse on the evening of 3 November 1986. Based upon information from structural surveys of the tank farm area, and a channel depth survey by the U.S. Army Corps of Engineers the waterway was reopened to navigation (subject to the conditions herein) at 9:00 o'clock a.m. on Friday 7 November 1986. The circumstances requiring this regulation arise from the fact that rubble from the sea wall and tank farm containment bulkhead as well as soil from the shore embankment have fallen into the Chelsea River. Additionally, vessels required to be present for sea wall reconstruction and rubble removal are moored in the area. Their presence constricts the waterway just downstream from the Chelsea Street Highway drawbridge making unrestricted use of the waterway unsafe. The conditions set forth in the regulation were developed after consultation with the Boston Harbor Pilots and the Boston docking masters. The conditions set forth to govern vessels operating through the Chelsea Street Drawbridge (33 CFR 165.120) are not modified by this regulation and remain in full effect. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T0117 is added to read as follows:

§ 165.T0117 Safety Zone: Chelsea River, Jenny Dock.

(a) *Location.* The following area is a safety zone: The waters of the Chelsea River, Boston Inner Harbor starting at a line drawn across the the Chelsea River 100 yards downstream of the Chelsea Street Highway Drawbridge between Chelsea and East Boston, MA. The safety zone extends downstream to a line drawn across the Chelsea River at the southwestern edge of the Mobil Oil Terminal in East Boston, Massachusetts. The entire river between these two lines is encompassed within this zone.

(b) *Effective date.* This regulation becomes effective November 3, 1986. The regulation will terminate when recontruction of the collapsed sea wall at the Northeast Petroleum Terminal in Chelsea, MA (Jenny Dock) has been completed and construction vessels have been removed from the site, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this Part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) The following standards are minimum requirements for vessels 450 feet or greater in length overall (including tug and barge combinations) intending to transit the Chelsea River. Additional precautions may be taken by the pilot and/or person in charge (Master or Operator) on vessels of any size.

(i) Vessels shall transit the safety zone only during the hours between sunrise and sunset.

(ii) No vessel greater than 575 feet in length overall (including tug and barge combinations) and/or no vessel greater than 86 feet in extreme breadth may transit this safety zone unless fitted with an operational bow thruster.

(ii) The maximum draft from vessels transiting this safety zone is 31 feet.

(iv) No vessel may transit this safety zone inbound during an ebb tide.

(2) Variances from the standards listed above must be approved in advance by the Captain of the Port.

Dated: November 17, 1986.

R. L. Anderson,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 86–27299 Filed 12–4–86; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for Issue 21 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, 39 CFR 111.1.

Most of the revisions are minor, editorial, or clarifying. Substantive changes, such as the revised regulations on bulk third-class sacking, preferred rates, and plant load operations, have previously been published in the **Federal Register.**

EFFECTIVE DATE: September 4, 1986.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 268–2960.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1) has been amended by the publication of a transmittal letter for issue 21, dated September 4, 1986. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal letter for issue 21 covers the minor changes not previously described in interim or final rules published in the **Federal Register.**

Note: Issue 21 is a complete revision of the DMM. It contains all DMM revisions published between November 21, 1985, and September 4, 1986 (Postal Bulletin 21541 through 21582). In addition to substantive and procedural changes, issue 21 reflects the organization title changes implemented as a result of the Spring 1986 Postal Service restructuring.

Summary of Changes

Major Revisions

1. Forwarding and Return Services. The following sections are revised to clarify and enhance the regulations governing mail forwarding and return services:

a. Exhibit 159.151 is revised and expanded to Exhibits 159.151a-f to reflect clearly and accurately the new forwarding and return rules and to specify permissible endorsements and two abbreviations for endorsements used on third- and fourth-class mail. The endorsements are *Forwarding and Return Postage Guaranteed—Address Correction Requested and Do Not Forward—Address Correction Requested—Return Postage Guaranteed.*

b. Section 159.16 is added to require that undeliverable-as-addressed mail be processed within 24 hours after receipt at the markup unit.

c. Section 159.212 is revised to clarify that a sender's endorsement

guaranteeing forwarding postage on fourth-class mail will be honored only if the addressee also has guaranteed forwarding postage.

d. Section 159.221f specifies that fourth-class mail is forwarded only locally or when the recipient guarantees forwarding postage.

e. Section 159.331 adds the last two sentences for general information.

f. Section 159.412 is revised to show that post and postal cards that cannot be forwarded or returned now are sent to a dead letter branch.

g. Section 492.2 is revised to specify the return of Form 3579, *Undeliverable 2nd, 3rd, 4th Class Matter.*

h. Section 492.3 is added to provide a general description of Address Change Service.

i. Section 691 is restructured for clarity and conciseness, to reorganize the use of the *Do Not Forward* endorsement, and to ensure that the weighted fee for forwarding and return service is not charged when the forwarding is not caused by a customer's move.

j. Section 791 is revised to clarify the return service for fourth-class mail.

k. Section 793 is revised to clarify the method used when preparing address correction notification (PB 21546, 12–26–85).

2. * * *

3. * * *

4. * * *

Other Revisions

1. Section 113.66 and Exhibit 113.66 are revised to show Dr. Martin Luther King, Jr.'s Birthday as a holiday to be observed by the Postal Service (PB 21549, 1–16–86, and PB 21576, 7–24–86).

2. Section 114.2 is revised to update the addresses where information and complaints concerning a possible postal law violation can be sent (PB 21559, 3–27–86).

3. Section 122.422 is revised to reflect current forwarding regulations and to make it agree with section 153.11h (PB 21543, 12–5–85).

4. Exhibit 122.63e is revised to reflect optional area distribution labeling changes (PB 21544, 12–12–85).

5. * * *

6. * * *

7. Exhibit 125.2, including its footnotes, is revised to reflect changes in the restrictions applied to mail that is addressed to military post offices overseas (PB 21558, 3–20–86; PB 21560, 4–3–86; PB 21563, 4–24–86; PB 21571, 6–19–86; and PB 21578, 8–7–86).

8. Section 131 is revised to reflect that Rates and Classification Centers provide customer assistance on special mail services such as business reply mail and post office box service (PB 21567, 5–22–86).

9. In section 136.312, *Payment of Postage,* the last sentence is deleted, since the transient rate has been eliminated (PB 21575, 7–17–86).

10. Section 137.253 is added and 137.273a, 137.273b, 137.273d, 137.273f, 137.273i, and 137.273k are revised to reflect changes required to implement Phase I of the new Official Mail Accounting System (OMAS) (PB 21554, 2–20–86).

11. Section 137.273a is revised to allow all Federal government agencies to use the drop-shipment meter provisions contained in 144.39 (PB 21578, 8–7–86).

12. * * *

13. Section 137.3 is revised (1) to require that absentee balloting materials should meet the addressing guidelines in 122.3 and (2) to emphasize that postage is not required on these materials (PB 21578, 8–7–86).

14. Section 137.5 is revised to permit military units engaged in hostile operations to use a special postage due penalty mail format. Section 137.265 is revised to incorporate the provisions of 137.5 (PB 21563, 4–24–86).

15. Section 144 is revised to eliminate the requirement that a production model of each approved meter be deposited with the Postal Service. Also, a meter manufacturer's address and Postal Service organizational titles are updated (PB 21576, 7–24–86).

16. * * *

17. Section 145.1 is revised to clarify that mailings submitted with permit imprints are subject to weighing for the purpose of postage verification unless acceptance is authorized under an alternative procedure by the Rates and Classification Center (PB 21565, 5–8–86).

18. Section 147.28 is revised to reflect that Form 3532, *Refund of Fees for Retail Services,* has been combined with Form 3533, *Application and Voucher for Refund of Postage and Fees* (PB 21544, 12–12–85).

19. Sections 149.41b, 149.413, and 149.441a(3) are revised to correspond with the current Form 565, *Registered Mail Application for Indemnity/Inquiry* (May 1984)(PB 21560, 4–3–86).

20. Section 152.71 is revised to permit Federal agencies, including the Social Security Administration, to use Express Mail to send requests for the recall of specific mailing pieces from any post office (PB 21561, 4–10–86).

21. Section 155.262 is revised to clarify the policy on exceptions to existing delivery service because of physical hardship (PB 21545, 12–19–85).

22. Effective June 7, 1986, section 155.262 is revised to provide for managerial changes as required by the reorganization (PB 21571, 6–19–86).

23. Effective July 17, 1986, section 155.6 is revised to clarify the definition of an apartment. In addition to the clarification of a common building entrance and a common address, a residental building is now identified as an apartment when there are three or more units having a common building entrance OR a common address (PB 21575, 7–17–86).

24. Sections 158.215, 911.31a-d, 912.1, 912.2, 912.62d, 912.8a-b, 913.461a-c, 913.462, 914.31, 914.321, 914.322, 914.325, 914.326, 915.5, 916.3, and 933.31 are revised to emphasize the proper placement of special service endorsements, to explain the requirements for mailer printed forms, and to clarify other special regulations (PB 21541, 11–21–85).

25. Effective July 10, 1986, DMM Exhibit 159.14, *Endorsements for Mail Undeliverable-As-Addressed,* is revised as follows:

a. Endorsement 17 is revised to clarify the language.

b. Endorsement 20, also revised to clarify language, is renumbered 21.

c. New endorsement 20 is added to show that some orders for return of mail are issued due to violations of both the postal false representation and lottery provisions in the law (PB 21574, 7–10–86).

26. Section 159.16, which describes the Computer Forwarding System (CFS) processing objectives, inadvertently omitted from TL 20, is reinserted (PB 21572, 6–26–86).

27. Effective May 1, 1986, section 159.561 is revised to reflect the closing of the Boston, Massachusetts Dead Parcel Branch. All material formerly sent to Boston, MA 02205–9518 now will be sent to the New York Dead Parcel Branch, NY 10199–9543 (PB 21564, 5–1–86).

28. Section 322.2c is revised to reflect that the maximum thickness for postcards is no greater than 0.0095 of an inch (PB 21578, 8–7–86).

29. * * *

30. Effective July 17, 1986, sections 367.3 and 367.4 are reorganized to clarify and separate the packaging requirements (367.3) from the traying requirements (367.4) for carrier route mailings. The sections also are revised to allow carrier route First-Class mailers to prepare 3-digit carrier route trays when there are insufficient densities of mail to fill three-fourths of a standard tray for a single 5-digit ZIP Code. Section 367.313 also specifies that carrier route packages that are placed in the 3-digit carrier routes trays MUST be labeled with a pressure sensitive purple

label "CR" whenever the mailer uses the carrier route optional endorsement line (PB 21575, 7–17–86).

31. Section 367.32 is deleted, since 367.4 addresses the traying requirements for carrier route mailings (PB 21575, 7–17–86).

32. Section 367.421 is revised to include a reference to section 367.4 for traying requirements as well as 367.3 for packaging requirements (PB 21575, 7–17–86).

33. Sections 411.321, 411.322, and 411.323 are revised to reflect new criteria for copies of second-class publications to qualify for mailing at the in-county rates (PB 21549, 1–16–86).

34. Sections 411.321 (Note), 422.32c, and 426.11 are revised and sections 422.33 and 422.4c are added to ensure that certain publications that do not maintain a list of paid subscribers may continue to qualify for the in-county rates if they comply with the new criteria (PB 21552, 2–6–86).

35. Sections 412, 423.3, 442.1, 443.1, and 444.1 are revised to reflect the change in application procedures for requesting special second-class rates (PB 21578, 8–7–86).

36. Sections 422.32c and 422.32d are revised to clarify the requirements for second-class publications, specifically those publications issued by institutions and societies that carry general advertising, the circulation of which is limited mainly to members who pay for their subscriptions through membership dues (PB 21552, 2–6–86). Section 422.32c is revised further to make it consistent with other sections, which prescribe that the total distribution of the publication is used for determining whether a publication qualifies for second-class in-county rates, and section 422.32d was eliminated (PB 21557, 3–13–86).

37. * * *

38. Section 444.1 is revised and new section 484 is added to provide instructions for a new data collection form, Form 3541–CX, *Second-Class Certification for Multiple Issues on the Same Day,* that must be completed and submitted by the publisher with Form 3510, *Application for Second-Class Mail Privileges* (PB 21569, 6–5–86).

39. Sections 445.2, 445.3, and 445.4 are revised to require publishers who request authorization to deliver copies of second-class publications, at the publisher's own expense and risk, from the post office of original entry or post office of additional entry to other post offices to submit documentation that will allow the approving offices to verify the number of copies qualifying for and mailed at the various presort level discount rates (levels B, C, E, F, H, I, and K) (PB 21551, 1–30–86).

40. * * *

41. Section 453.2 is revised to allow publishers the option of simply printing the words "SECOND-CLASS" in the upper-right corner of any envelope, wrapper, or cover used with the publication (PB 21567, 5–22–86). Section 453.2a(3) is revised to read, "As an alternative to printing the information in (1) and (2), only the words 'Second-Class'. . ." (PB 21575, 7–17–86).

42. Sections 462.25c, 463.25c, 464.25c, 464.34b, and 467.222 are revised and 467.221a–d are added to clarify the minimum packaging and sacking requirements for second-class mail. The revised regulations permit mailers to make up packages and sacks that contain fewer than six copies of a publication for destinations when the copies are those that have not been placed in required or optional packages and sacks after all such packages and sacks have been prepared. The revised regulations also permit firm packages containing as few as two copies to be placed in bundles on pallets or directly on pallets (PB 21555, 2–27–86).

43. Section 467.342 is revised to allow mailers of second-class publications who are authorized to palletize sacks to prepare Transfer Hub pallets after all required 5-digit, 3-digit, SCF, and SDC pallets have been prepared (PB 21559, 3–27–86).

44. Section 468.1 is revised to specify that the applicable rates in 411.2 and 411.33–411.35 apply when copies that are delivered at destinations within the county of publication do not qualify for in-county rates. All copies of regular-rate and science of agriculture publications may qualify for the nonadvertising adjustment provided for in 411.25 (PB 21562, 4–17–86).

45. Section 472 is revised to emphasize that copies of second-class publications may be deposited only at places designated by the Postal Service as stated in section 200.050 of the Domestic Mail Classification Schedule (PB 21560, 4–3–86).

46. * * *

47. * * *

48. Sections 667.33 and 667.43 are revised to specify that the postmaster of the accepting post office may authorize a third-class mailer to use trays when the mail inside the trays is destined for delivery within the sectional center facility (SCF) of mailing (PB 21549, 1–16–86).

49. Effective June 26, 1986, section 667.66 is added to generally permit qualifying mailers to commingle third-class mail prepared for different rate levels (basic, five-digit, and carrier route) on the same pallet (PB 21572, 6–26–86).

50. Effective August 17, 1986, section 723.21 is revised to clarify postage computation procedures for matter that is mailed at the bulk bound printed matter rates (PB 21580, 8–21–86).

51. Section 917.51 is revised to remove the requirement that all Business Reply Mail (BRM) pieces have optical character readable address font styles. This change revokes a format requirement that appeared in *Postal Bulletin 21538, 10–31–85 (PB 21563, 4–24–86).*

52. Sections 919.421c and 919.421d are revised to allow (1) permit holders to use names other than that appearing on the permit and (2) omission of the "Insurance Fee If Any" endorsement (PB 21549, 1–16–86).

53. Section 941.131 is revised to permit computer-generated money orders (PB 21551, 1–30–86).

54. Section 941.3 is revised to rescind the restriction that no money order will be paid after 20 years (PB 21557, 3–13–86).

55. Section 944 is revised to update information concerning the Postal Savings System (PB 21559, 3–27–86).

56. Section 951 is revised to exempt mail addressed to a post office box address, which is used as part of Express Mail reshipment services, from being counted in the accumulation of overflow mail (PB 21564, 5–1–86).

57. Section 951 is revised to:

a. Cross reference the five box limit from 951.123 to 952.122b to facilitate administration.

b. Eliminate the requirement in 951.141 and 952.181 for residency for "other persons" to receive mail through an individual's post office box number.

c. State in 951.152a that specific arrangements must be made for the accumulation of mail beyond 30 days if an overflow condition is probable.

d. Cross reference the holding period requirements established in 951.155 and 952.193 to 159.332g for mail addressed and deliverable to a box number.

e. Preclude changes of payment period dates covered in 951.274 and 952.234 to circumvent fee changes.

f. Allow the rerental of a post office box 11 days after the payment period due date in 951.35.

g. Provide an inventory control list of

rented and vacant post office boxes and assigned caller service numbers in 951.62 and 952.237b.

h. State in 951.75 that only persons or organizations' representatives listed on the Form 1093, *Application for Post Office Box or Caller Service*, may file change of address orders.

i. In section 952.14, change the payment period for reserved number fees from the postal fiscal year to the calendar year (PB 21567, 5–22–86).

58. Under section 951.6, Record of Boxholders (PB 21567, 5–22–86), the paragraph titled *Who May File* should be modified as 951.753 (PB 21568, 5–29–86).

59. * * *

60. Section 951.2 is revised to allow the acceptance of post office box rental payments of up to 90 days in advance of the due date. Rental payments of more than 90 days in advance may be accepted at the discretion of the postmaster or Station or Branch Manager (PB 21580, 8–21–86).

61. Section 952.122c is revised to provide a uniform definition of the term "customer" for application of the five post office box limit rule (PB 21560, 4–3–86).

62. Minor editorial and typographical changes have been made in 411.214, 453.2, 915.612, 919.23, 933.44, 940.134, 940.135, and 941.352.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In consideration of the foregoing, 39 CFR 111.3 is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual

* * * * *

Transmittal letter for issue	Dated	Federal Register publication
* * * * *		
21	Sept. 4, 1986	51 FR

Paul J. Kemp,

Supervisory Attorney, Legislative Division.

[FR Doc. 86–27345 Filed 12–4–86; 8:45 am]

BILLING CODE 7710–12–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR PARTS 3100, 3400, 3470 AND 3500

[Circular No. 2591; AA–60–87–4121–02]

Coal Management—General; Coal Management Provisions and Limitations; Oil and Gas Leasing; Leasing of Solid Minerals Other Than Coal and Oil Shale; Amendments to Incorporate Changes Required by Section 2(a)(2)(A) of the Mineral Leasing Act of 1920

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the existing regulations in 43 CFR Groups 3100, 3400, and 3500 to bring them into compliance with the requirements of section 2(a)(2)(A) of the Mineral Leasing Act of 1920. This section was added to the Mineral Leasing Act by section 3 of the Federal Coal Leasing Amendments Act on August 4, 1976. Section 2(a)(2)(A) provides that any entity, or any of its affiliates, that holds and has held a Federal coal lease for 10 years beginning on or after August 4, 1976, and which is not producing coal in commercial quantities from each such lease, cannot qualify for issuance of any other lease granted under the Mineral Leasing Act. The cutoff date was extended by the Act of December 19, 1985, from August 4, 1986, to December 31, 1986.

DATE: Effective December 5, 1986.

ADDRESS: Inquiries or suggestions may be addressed to: Director (660), Bureau of Land Management, Room 3411, Main Interior Building, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Paul W. Politzer, (202) 343–7722, Allen B. Agnew, (202) 343–7722, or Pamela J. Lewis, (202) 343–7722

SUPPLEMENTARY INFORMATION: Section 2(a)(2)(A) of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 201(a)(2)(A) (1982)) was added to the Mineral Leasing Act by section 3 of the Federal Coal Leasing Amendments Act on August 4, 1976. Section 2(a)(2)(A) is a lessee-qualification requirement which directs that any entity, or any of its affiliates, that holds and has held a Federal coal lease for 10 years when the entity, or any of its affiliates, is not, except as provided in section 7(b) of the Mineral Leasing Act, producing coal from the lease deposits in commercial quantities, shall not be issued any leases granted under the provisions of the Mineral Leasing Act. (All references to the U.S.C., unless otherwise noted, are to the 1982 edition.

The Bureau of Land Management has published guidelines for the implementation of the provisions of section 2(a)(2)(A) of the Mineral Leasing Act. The proposed guildelines were published in the **Federal Register** on February 15, 1985 (50 FR 6398), with a 60–day public comment period. The comment period, in response to public requests, was later extended for an additional 30 days, ending on May 13, 1985. The proposed guidelines generated 21 comments, all of which were given careful consideration during the preparation of the final guidelines. The final guidelines, including a discussion of the comments received, were published in the **Federal Register** on August 29, 1985 (50 FR 35125). The **SUPPLEMENTARY INFORMATION** section of the final section 2(a)(2)(A) guidelines (50 FR 35125 through 35133 (August 29, 1985)) that addressed the public comments received on the draft section 2(a)(2)(A) guidelines is hereby incorporated in this final rulemaking in its entirety, as modified by this **SUPPLEMENTARY INFORMATION** for these final regulations.

The final guidelines incorporated changes suggested in the comments on the proposed guidelines and advice rendered by the Office of the Solicitor, Department of the Interior, and are consistent with Solicitor's Opinion M–36951 (92 I.D. 537), which interpreted Section 2(a)(2)(A) of the Mineral Leasing Act.

Section 2(a)(2)(A) of the Mineral Leasing Act would have taken effect on August 4, 1986. However, the effective date was extended by the Act of December 19, 1985 (Pub. L. 99–190), from August 4, 1986, to December 31, 1986.

The Department of the Interior delayed making necessary revisions to Title 43 of the Code of Federal Regulations because of legislation pending in the Congress that would have amended section 2(a)(2)(A) of the Mineral Leasing Act. Since the Congress did not take action to amend section 2(a)(2)(A), the Bureau of Land Management on October 20, 1986 (51 FR 37202), proposed amendments to the existing regulations in Title 43 of the Code of Federal Regulations to implement the provisions of section 2(a)(2)(A) of the Mineral Leasing Act. Due to the immediacy of the effective date of section 2(a)(2)(A) of the Mineral Leasing Act, the proposed rulemaking was given a 30-day public comment period, ending November 19, 1986. This rulemaking is being made effective upon publication in the **Federal Register**

because it recognizes exemptions and relieves restrictions, and for good cause (5 U.S.C. 553(d)). The provisions of section 2(a)(2)(A) become applicable by operation of law on December 31, 1986. This rulemaking must be effective by that date also, so that affected parties will have some certainty regarding the status of both pending and new lease applications. If the rulemaking were not effective until sometime in January 1987, a gap would exist and whether these applicants are qualified would be in doubt. Finally, the adverse consequences of section 2(a)(2)(A) will occur by operation of law on December 31, 1986, whether or not these regulations are in effect.

The Bureau of Land Management received comments on the proposed rulemaking from 24 entities. Of these, 12 were from business entities, 3 were from trade associations, 2 were from environmental organizations, 1 was from an attorney, 2 were from state governments, and 4 were from offices of the Bureau of Land Management. All 24 comments received have been given careful consideration in the drafting of these final regulations. The comments are addressed below; the text of the regulations has been changed as appropriate.

In general, comments addressed seven specific areas: (1) Section 2(a)(2)(A) bracket, (2) pending actions and appeals, (3) producing, (4) control, certification of compliance and apparent double filing of qualifications for lease issuance, (5) the definition of the phrase "holds and has held," (6) oil and gas lease qualifications and assignments, (7) and apparent conflicts between specific provisions of proposed 43 CFR 3472.1–2(e). Following general discussion of the regulations below, the general and specific comments received on the seven specific areas are addressed.

General Discussion

Section 3 of the Federal Coal Leasing Amendments Act of 1976 added paragraph 2(a)(2)(A) to the Mineral Leasing Act. Section 6 of the Federal Coal Leasing Amendments Act added paragraph 7(b) to the Mineral Leasing Act. That paragraph provides that each Federal coal lease must satisfy the requirements of diligent development and continued operation. The phrase "amended Mineral Leasing Act" in this **SUPPLEMENTARY INFORMATION** refers to the Mineral Leasing Act as amended by the Federal Coal Leasing Amendments Act of 1976, and subsequent amendments. The following discussion addresses the reason for publication of regulations and the major issues concerning section 2(a)(2)(A).

1. One primary reason for the publication of these final regulations is to ensure uniform and consistent nationwide implementation of the "producing . . . in commercial quantities" requirement of section 2(a)(2)(A). Determination of compliance with this provision requires the establishment of a time frame during which the current regulatory definition of commercial quantities (1 percent of the recoverable coal reserves) must be produced from each lease for section 2(a)(2)(A) purposes. This determination of compliance is made by the Bureau of Land Management Field Offices.

2. Section 2(a)(2)(A) applies, for all practical purposes, only to the holders of Federal coal leases issued prior to enactment of the Federal Coal Leasing Amendments Act on August 4, 1976. "New" Federal coal leases, those issued or otherwise made subject to the amended Mineral Leasing Act after August 4, 1976, terminate under amended section 7(a) after 10 years if they are not producing in commercial quantities, so the prohibition of section 2(a)(2)(A) on holding such a Federal coal lease for 10 years and not producing cannot occur.

3. Section 2(a)(2)(A) is a "qualification" provision, affecting the ability of an entity, or any of its affiliates, to acquire new Federal leases granted under the Mineral Leasing Act. Section 2(a)(2)(A) is not a "diligence" provision. It is not to be equated with amended section 7(a) of the Mineral Leasing Act, which provides for production in commercial quantities at the end of 10 years after a lease issuance or after the lease becomes subject to the amended Mineral Leasing Act, nor with amended section 7(b) of the Mineral Leasing Act, which provides for diligent development and continued operation. Diligence relates to the obligation to develop a specific Federal coal lease or lose that Federal coal lease. The diligence clock is tied to the date that the Federal coal lease is readjusted (20 years after issuance), or otherwise made subject to the amended Mineral Leasing Act. The diligence production clock is independent of the section 2(a)(2)(A) 10-year Federal coal lease-holding clock. If a Federal coal lessee does not seek to qualify for new Federal leases granted under the Mineral Leasing Act (but decides rather to continue holding those Federal coal leases it currently holds), section 2(a)(2)(A) does not compel that Federal coal lessee to do anything. Section 2(a)(2)(A) requires that a lessee be "producing" coal in order to be issued a new lease under the Mineral Leasing Act. In addition, the production must constitute "commercial quantities," an amount which is not further defined in the statute. The regulations provide this definition.

4. The section 2(a)(2)(A) leasing prohibition is not limited only to Federal coal leasing. Where a Federal coal lease is in violation of section 2(a)(2)(A), the Secretary may not issue that Federal coal lessee, or any of its affiliates, any new Federal leases granted under the terms of the Mineral Leasing Act for coal, gilsonite (including all vein-type, solid hydrocarbons), onshore oil and gas (including tar sand), oil shale, phosphate, potash, sodium, and sulphur. Solicitor's Opinion M–36951 (92 I.D. 537, 546–7). The Department of the Interior's position regarding the scope of section 2(a)(2)(A) was upheld in the case of *Conoco, Inc.* v. *Hodel*, 626 F. Supp. 287 (D. Del. 1986).

General Comments

Two comments received on the proposed rulemaking stated that the publication of these regulations is a major Federal action and requires publication of an environmental impact statement. As was stated in the **SUPPLEMENTARY INFORMATION** section that accompanied the proposed rulemaking (51 FR 37202, 37203) on October 20, 1986: "It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required." The comments stated that the above quoted statement was not based on any environmental analysis or finding of no signficant impact. This is an incorrect assumption. As with any proposed rulemaking of this type, an Environmental Assessment was prepared by the Bureau of Land Management. It was determined by the Department of the Interior that there was no significant impact. Copies of the Environmental Assessment and attendant Finding of No Significant Impact, dated September 26, 1986, may be obtained by writing to: Director (660), Bureau of Land Management, 1800 C Street, NW., Rm. 3411, Washington, DC 20240.

Several comments stated that the proposed regulations at 43 CFR 3472.1–2(e) placed a restriction on the assignment of Federal coal leases to an entity, and any of its affiliates, that would otherwise be barred from being issued any Federal lease because the entity, and any of its affiliates, was not

in compliance with section 2(a)(2)(A). The restriction on any type of transfer of a Federal coal lease to such a disqualified entity, and any of its affiliates, is contained in 43 CFR 3453.3–1(a) when read in concert with 43 CFR 3453.2–1, and is an exercise of Secretarial discretion under section 30 of the Mineral Leasing Act (30 U.S.C. 187). This provision was added to 43 CFR Group 3400 on July 30, 1982 (47 FR 33114, 33148). This final rulemaking in no way affects the existing regulatory language regarding transfers of Federal coal leases. More importantly, and contrary to the concerns stated by many comments, Federal coal is the only commodity leasable under the Mineral Leasing Act that is subject to this regulatory provision. The final regulations have been revised to reflect that the other commodities leasable under the Mineral Leasing Act, as listed in item number 4 of the *General Discussion* above, are not subject to section 2(a)(2)(A) restrictions regarding transfers. The lease issuance prohibition, however, applies to all of the commodities listed in item number 4 of the *General Discussion* above.

It should be noted that the term "lease" used throughout the 43 CFR Group 3400 regulations is defined at 43 CFR 3400.0–5(r) to be solely restricted to Federal coal. A cross-reference from another 43 CFR Group related to another set of leasable commodities does not, by inference, alter the use of the term "lease" at 43 CFR Group 3400. For example, the cross-reference from 43 CFR 3102.5 does not alter the term "lease" as used throughout the 43 CFR Group 3100 regulations, as the terms "gas" and "oil" are defined at 43 CFR 3000.0–5 (a) and (b), respectively. The same logic holds true for the cross-reference from 43 CFR 3502.1, which does not alter the term "lease" as used throughout the 43 CFR Group 3500 regulations, as the term "leasable minerals" is defined at 43 CFR 3500.0–5(h) (51 FR 15204, 15214, April 22, 1986).

One comment stated that in at least three areas the proposed regulations were in direct conflict with either the statute or the existing rules, as well as the discussion of the statute and existing rules contained in Solicitor's Opinion M–36951. The comment then stated that the Solicitor's Opinion was inconsistent with the statute. First, the comment stated that diligent development and continued operation (section 7(b) of the Mineral Leasing Act) apply to all Federal coal leases due to the express exception in section 2(a)(2)(A). Second, the comment stated that the regulatory diligent development period for Federal coal leases issued prior to August 4, 1976, is equivalent to the section 2(a)(2)(A) 10-year holding period. Third, the comment stated that the use of floating 10-year brackets for determining compliance with the section 2(a)(2)(A) continuing production obligation is not allowed, based on the first two statements.

The arguments did not persuade the Department of the Interior to reconsider the analysis and conclusions in Solicitor's Opinon M–36951. Section 2(a)(2)(A)'s relevant part states:

> When such entity is not, except as provided for in section 7(b) of this Act, producing coal from the lease deposits in commercial quantities . . . . 30 U.S.C. 201(A)(2)(A)

The express exception reference to "section 7(b)" can only be inferred to state that if a Federal coal lease is subject to the amended Mineral Leasing Act "diligence," then the section 2(a)(2)(A) production requirement is relieved simultaneously with the relief of the amended section 7(b) production requirement, when such relief is granted in accordance with the amended section 7(b) conditions for relief. The section 7(b) production requirement can be relieved by *force majeure* suspension or by payment of advance royalty in lieu of continued operation, consistent with amended section 7(b)'s limitations (i.e., no less than the production royalty that would have been paid and for not more than 10 years after the date that the lease became subject to the amended Mineral Leasing Act's diligence provisions). The section 7(b) conditions of diligent development and continued operation attach to a Federal coal lease only after it becomes subject to the amended Mineral Leasing Act. See Solicitor's Opinion M–36939, 88 I.D. 1003.

The above analysis does *not* mean that Federal coal leases that have not yet been made subject to the amended section 7 of the Mineral Leasing Act are *not* subject to conditions of diligent development and continued operation. The original section 7 of the Mineral Leasing Act, which had no subsection (b), did require Federal coal lease-specific diligence requirements (30 U.S.C. 207 (1970)). Pre-August 4, 1976, Federal coal leases were issued subject to those conditions, as implemented in the minimum production or comparable Federal coal lease clause. The above analysis means only that the amended section 7(b) is not applicable to these pre-August 4, 1976, Federal coal leases until they are made subject to the amended Mineral Leasing Act.

The Department of the Interior was not persuaded by this comment, when it published the final guidelines implementing section 2(a)(2)(A) (50 FR 35125, August 29, 1985), and the Department of the Interior is still not persuaded by this comment that Congress intended amended section 7(a) to be prospective (in its produce-in-10-years and royalty provisions), but that amended section 7(b) be retroactive. Congress never distinguished among the subsections of amended section 7 in discussing its prospective application. Congress recognized the dual production obligations of section 2(a)(2)(A) and section 7(b) by including the express exception-of-production language to state that a Federal coal lease, with its "diligence" production obligations under section 7(b) suspended, would also have its production obligation for section 2(a)(2)(A) suspended. Until a Federal coal lease becomes subject to the amended Mineral Leasing Act "diligence" requirement, its only production obligations, if any, are those established in the pre-August 4, 1976, Federal coal lease terms. After a Federal coal lease becomes subject to the amended Mineral Leasing Act, the section 7(b) "diligence" requirements apply.

As stated above, section 2(a)(2)(A) is *not* a lease-specific diligence provision, but is a lessee-qualification requirement. The question of whether the diligence provisions of the amended section 7 applied by operation of law to all coal leases in existence on August 4, 1976, the date of the amendment, is not a matter addressed by this rulemaking. This question is currently before the U.S. District Court for the District of Columbia (*NRDC* v. *Burford*, Civil No. 82–2763), where the plaintiffs have recently dropped their additional allegations that issuance of the 1982 diligence regulations violated the National Environmental Policy Act and the Administrative Procedure Act.

Regarding Federal coal leases that are not yet subject to the amended Mineral Leasing Act, the Department of the Interior adopted 10 years as the appropriate time during which a lessee meets its commercial quantities obligation under section 2(a)(2)(A) by producing coal under an approved plan of operations. The Federal coal lease-holding period for the section 2(a)(2)(A) prohibition, however, is independent of the time frame over which production may be measured. The period over which commercial quantities will be measured is not tied to August 4, 1976. Neither the statute nor the regulations prescribe such a time frame (Solicitor's Opinion M–36951, 92 I.D. 537, 543). The beginning of the section 2(a)(2)(A)

production bracket may begin as late as the date that coal is first produced on or after August 4, 1976. The Department of the Interior concluded, after examining the comments and considering alternative ways of determining commercial quantities, that a 10-year period for determining commercial quantities is appropriate, and that it should begin on the date that coal is first produced on or after August 4, 1976. In all cases, the operative quantity to be used in determining whether a Federal coal lease is producing in commercial quantities is 1 percent of the recoverable coal reserves, as the term "commercial quantities" is currently defined by regulation at 43 CFR 3480.0–5(a)(6) (1985). For further clarification and discussion on the issue of the section 2(a)(2)(A) bracket, see *Specific Comment* number 1, below.

Two comments stated that the "simplest and most effective way to ease the burdens of Section 3 [sic] enforcement would be for the Department to publish a list which indicates just which companies are barred from receiving new MLA leases and revise it at appropriate intervals. While the list might not be able to detail all subsidiaries and parents of each holder of a lease who is affected by the section 3 prohibition, it would clearly aid the authorized officers in the field and provide warning and notification to companies affected by section 3." The Department of the Interior accepts this advice, and will make such a list available to any member of the public upon request.

The Bureau of Land Management developed its first such list in the spring of 1985 and has been updating it ever since. The list is currently updated weekly, based on the previous week's activities regarding arm's-length lease assignments, relinquishments, approvals of logical mining units determined to be producing, and statutory relief from production requirements, where applicable. The list is not deemed to be confidential in any manner. The list should not be considered as final adjudication by the Bureau of Land Management of whether an entity, and any of its affiliates, is or is not qualified under section 2(a)(2)(A), but is merely an indication of such status. Copies of the weekly list are available to the public and any other concerned party by writing to the following address: Director (660), Bureau of Land Management, 1800 C Street NW., Rm. 3411, Washington, DC 20240.

One comment stated that preference right leases, if applications are still pending before the Bureau of Land Management, should not be prevented from being issued, and inquired as to the effect of section 2(a)(2)(A) on lease modifications. Another comment stated that emergency leases should not be prevented from being issued. The Department of the Interior is without authority to alter the intent of Congress. Section 2(a)(2)(A) states, in part, that the "Secretary shall not issue a lease or leases under the terms of this Act. . . ." The Solicitor's Opinion M–36951 stated that the intent of Congress in using "Act" when it added section 2(a)(2)(A) to the Mineral Leasing Act referred directly to the Mineral Leasing Act of 1920, as amended and supplemented, not the terms of the Federal Coal Leasing Amendments Act of 1976, as some have interpreted. This was argued in the District Court in *Conoco, Inc.* v. *Hodel*, in which the Court upheld the Department of the Interior's interpretation (626 F.Supp 287, D.Del. 1986). Therefore, neither preference right leases nor emergency leases for Federal coal may be issued to an entity, or any of its affiliates, if it holds a Federal coal lease that would otherwise disqualify the entity, or any of its affiliates, under section 2(a)(2)(A) from being issued a lease granted under the Mineral Leasing Act. However, lease modifications under section 3 of the Mineral Leasing Act (30 U.S.C. 203) do not involve issuance of new Federal coal leases. The Bureau of Land Management will continue to consider lease modifications without regard to section 2(a)(2)(A), because without lease modifications many bypass situations could result.

Two comments stated that revisions to the final guidelines implementing section 2(a)(2)(A) should be made to conform the guidelines to the final regulations, as adopted. The Department of the Interior agrees with this recommendation, and the Bureau of Land Management intends to publish revised guidelines in 1987.

Finally, several comments stated that the definitions in the proposed rulemaking were confusing, partly because of the repetitive use of the phrase "for purposes of section 2(a)(2)(A)." To avoid such confusion, all of the definitions have been consolidated and are contained in § 3400.0–5(rr).

Specific Comments

1. *Section 2(a)(2)(A) Bracket.* One comment stated that an assignment "without notice of a short section 2(a)(2)(A) bracket by an Interior official might come as quite a shock to a lessee and could frustrate entirely its section 2(a)(2)(A) compliance strategy." The comment also stated that a prior written notice should be given to the lessee of a proposed section 2(a)(2)(A) bracket assignment decision, together with the reasons therefore. Two comments stated that the Department of the Interior needed to articulate more clearly the purpose and function of this section 2(a)(2)(A) bracket concept in the final rulemaking.

Another comment recommended that the regulatory proposal be expanded to specifically address "which Bureau of Land Management authority is to establish a section 3 [sic] 'bracket' for each lease and to mandate that such a 'bracket' be established for each pre-76 [sic] lease immediately."

Another comment stated that the proposed use of a 10-year section 2(a)(2)(A) bracket constituted a "terse and basically unintelligible definition with absolutely no discussion of the meaning of the term or of the justification for making use of brackets." The comment further continued, stating that "the fact is that section 3 [sic] and section 7 *must* be subject to similar interpretations. The provisions were developed . . . as parts of the same statute. . . . they both establish ten year time frames." (Emphasis in original.)

These specific comments, as well as the discussion of section 2(a)(2)(A) brackets in the *General Comments* section above, led the Department of the Interior to consider carefully the proposed regulatory discretion regarding the assigning section 2(a)(2)(A) brackets versus the establishment in this final rulemaking of a fixed, regulatory time frame. The comments expressed concern about potential abuse by Bureau of Land Management Field Office personnel establishing section 2(a)(2)(A) brackets and, upon subsequent reevaluation, reestablishing the section 2(a)(2)(A) brackets. To alleviate this concern, and to establish a consistent, nationwide policy, the Department of the Interior has determined that it is appropriate to establish a specific section 2(a)(2)(A) brackets in this final rulemaking.

As noted earlier, section 2(a)(2)(A) provides no definition of commercial quantities, leaving this to the discretion of the Secretary. Solicitor's Opinion M–36951 (92 I.D. 537, 543–46). By regulation, the amount has been set at 1 percent of recoverable coal reserves. The section 2(a)(2)(A) guidelines adopted the policy of utilizing the amended section 7(a) 10-year production time frame as the basis for producing in commercial quantities under section 2(a)(2)(A).

The comments stated that this 10-year period is appropriate. Therefore, the section 2(a)(2)(A) bracket has been set in the final rulemaking as 10 years from

the date coal is first produced from the Federal coal lease on or after August 4, 1976, where the first production occurs before the lease becomes subject to the amended Mineral Leasing Act. A lessee who has held a Federal coal lease for 10 years and who is producing coal under an approved plan of operations for mining will qualify, and any of its affiliates will qualify, for new mineral leases granted under the Mineral Leasing Act at any time during the section 2(a)(2)(A) bracket. If the lessee meets its commercial quantities requirement of producing 1 percent of recoverable reserves during the section 2(a)(2)(A) bracket, the lessee, and any of its affiliates, will qualify for new mineral leases granted under the Mineral Leasing Act thereafter, provided the lessee is "producing" coal at the time of determination of lessee qualification. If the lessee does not meet its commercial quantities requirement of producing 1 percent of recoverable reserves by the end of the section 2(a)(2)(A) bracket, the lessee, and any of its affiliates, will no longer qualify for new mineral leases granted under the Mineral Leasing Act after the bracket ends (i.e., 10 years after the date that coal is first produced from the lease on or after August 4, 1976). This disqualification will continue until the lessee produces the commercial quantities amount 1 percent. When the lessee does in fact produce 1 percent from each such Federal coal lessee, the lessee, and any of its affiliates, will again qualify for new mineral leases granted under the Mineral Leasing Act, provided the lessee is "producing" coal at the time of qualification. The 1 percent of recoverable coal reserves that must have been produced shall be 1 percent of the recoverable reserves in existence at the beginning of the 10-year section 2(a)(2)(A) bracket.

In all circumstances, the "producing" requirement is relieved, and the section 2(a)(2)(A) bracket is extended, if necessary, by the duration of an approved suspension under section 39 of the Mineral Leasing Act of under section 7(b) of the amended Mineral Leasing Act.

It must be emphasized that section 2(a)(2)(A) is independent of the production obligations under section 7 of the amended Mineral Leasing Act. However, where the coal is first produced from a Federal coal lease after is becomes subject to the amended Mineral Leasing Act, production which meets the commercial quantities requirements of the amended section 7 will also satisfy the commercial quantities requirement of section 2(a)(2)(A).

The only relief from a section 2(a)(2)(A) bracket (other than extension due to a suspension under section 39 or amended section 7(b) occurs when a lease is committed to an approved logical mining unit. Production from an approved logical mining unit satisfies both the "producing" and the "commercial quantities" requirements under section 2(a)(2)(A) for all Federal coal leases committed to the unit, whether producing or not. Thus, the lessee, and any of its affiliates, holding any Federal coal lease that is committed to an approved logical mining unit qualifies for new mineral leases granted under the Mineral Leasing Act provided that coal is being produced from the logical mining unit at the time of qualification. If the logical mining unit fails to produce coal in commercial quantities under the terms of its approval, then the Federal coal leases contained in the approved logical mining unit will not have satisfied their commercial quantities requirement for purposes of section 2(a)(2)(A) thereafter to the extent that such qualification was based on production from the approved logical mining unit.

These provisions ensure that each Federal coal lease is not only producing in commercial quantities, as prescribed by section 2(a)(2)(A), but also is not being held for speculative purposes. In all circumstances, the lessee must be producing coal unless one of the statutory provisions authorizes a cessation. This was, and still is, the clear intent of the Congress, as expressed in the Federal Coal Leasing Amendments Act of 1976.

2. *Pending actions and appeals.* Several comments stated that the final guidelines for implementation of section 2(a)(2)(A) included 6 administrative actions which permit a lessee holding a noncompliance lease to avoid the section 2(a)(2)(A) sanction: relinquished lease (thus no longer holds); arm's length assigned lease (thus no longer holds); approved, producing logical mining unit (thus the production obligation is being satisfied); approved section 39 suspension of operations and production in the interest of conservation (thus the production obligation is suspended); approved *force majeure* suspension under amended section 7(b) (thus the production obligation is suspended); and payment of advance royalty in lieu of continued operation under amended section 7(b) (thus the production obligation is satisfied by the in lieu payment). However, the proposed rulemaking only allowed pending applications for 3 of these 6 actions to avoid disqualifying an entity, or any of its affiliates, during the pendency of the action before the Bureau of Land Management.

As the comment correctly stated, an applicant for a section 39 or section 7(b) lease suspension is not protected during the pendency of the application, "yet processing those suspension applications is much more time-consuming than is processing relinquishment, assignment, or, even, LMU applications." Requests for relinquishments and assignments and for establishment of logical mining units are relatively routine and are approved in most cases, i.e., when statutory and regulatory requirements are satisfied. However, qualification for a suspension has very stringent tests that must be met. The tests associated with a request for a suspension are not readily met merely by compliance with the law and regulations, in contrast to pending requests for relinquishments or assignments or approval of a logical mining unit. This is 1 reason that the Department of the Interior determined that it will not allow lessees to be qualified during the pendency of requests for suspensions. In addition, there are approximately 12,000 oil and gas leases issued annually. Processing such applications for suspensions for coal leases may take several months, if not longer, and could, if the suspension requests are denied, result in the overwhelming administrative burden of having to cancel, terminate, or revoke many thousands of oil and gas leases retroactively, as well as leases for other Mineral Leasing Act minerals, that were issued during the pendency of such requests to the Bureau of Land Management. Further, if the comment were adopted and if the Department of the Interior were to allow entities to obtain Mineral Leasing Act mineral leases during the pendency of a suspension, the Department of the Interior would be as flooded with requests for these suspensions as it currently is for protests/appeals/civil suits on Federal coal lease readjustments (more than 100 as of September 30, 1986). The Department of the Interior simply does not have the manpower or the available budget to handle such an administrative workload.

Two comments stated that an addition should be made to the pendency language regarding Congressionally authorized (not Congressionally required) exchanges; for example, where a request has been made to the Bureau of Land Management pursuant to the

Congressionally authorized I–90 exchange legislation or the Congressionally authorized alluvial valley floor exchange legislation (i.e., the Surface Mining Control and Reclamation Act of 1977). The Department of the Interior has determined that, although Congress has authorized such exchanges, such legislation does not confer any valid existing rights that require the exchanges to be consummated. Therefore, these comments were rejected.

Several comments stated that an appeal of an adverse decision by the Bureau of Land Management on any of the 3 listed pendency actions contained in the proposed rulemaking should continue the requestor's immunity from the section 2(a)(2)(A) disqualification. One comment stated: "Otherwise, the rule will have a chilling effect upon the full exercise of an entity's rights and may be an infringement on its due process rights." One comment stated that: "Moreover, it conflicts directly with 43 CFR 4.21(c) [sic] which states that 'a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal.'" However, the introductory language in 43 CFR 4.21(a) states: "Except as otherwise provided by law or other pertinent regulation, a decision . . . ." 43 CFR 3472.1–2(e)(4) has been clarified to state that the decision by the Authorized Officer regarding any of the three pending actions shall be effective immediately, regardless of subsequent appeal of that decision. Therefore, the suspension provision at 43 CFR 4.21(a) will not be triggered if an entity files an appeal from an adverse decision of the Bureau of Land Management in one of the 3 pending categories retained in this final rulemaking.

When an administrative decision is effective, pending appeal, the affected entity has the option of seeking a stay from the Interior Board of Land Appeals or going directly to court to challenge the effectiveness of the decision. When an entity has immediate access to judicial relief, its due process rights cannot be said to be violated.

The comment further stated that: "By denying an entity the right to obtain a lease pending a good faith appeal, BLM is denying that entity's legal right under the 5th Amendment and 14 Amendments [sic] to the Constitution in the absence of any statutory provisions directing that the entity's rights be so impaired. This provision is clearly without legal support and must be deleted." To the extent that this is a complaint that due process rights are being violated (5th Amendment to the Constitution), the Department of the Interior has addressed it by stating the right to challenge judicially the fact that the decision has been put into effect. To the extent that this is a claim that property is being taken (5th Amendment to the Constitution) or that "equal protection" rights are being violated (14th Amendment to the Constitution), Congress possesses and has exercised the power to determine what entities qualify under the Mineral Leasing Act to apply for and be issued mineral leases. The Department of the Interior is under no constitutional or statutory obligation to promulgate regulations regarding requests for approval of actions pending before the Bureau of Land Management, nor does an application for a lease under the Mineral Leasing Act rise to the level of a Constitutionally protected "property" right.

In fact, the Department of the Interior in the alternative could have promulgated regulations without allowing any requests for actions pending before the Bureau of Land Management to relieve the applicant or requestor from the section 2(a)(2)(A) disqualification. From that standpoint, the Department of the Interior believes it has taken a positive action to ensure that there is no infringement on due-process rights.

These comments were rejected, with the exception of the regulatory clarification noted above.

Finally, two comments stated that the Bureau of Land Management should consider the dual pendency of requests before it. After careful consideration, 43 CFR 3472.1–2(e)(4) has been amended to allow for this in a specific, and justified, limited universe of Federal coal leases. In many instances, Federal coal leases were received by the current record title holder by arm's-length assignment. Some of the original assignors retained the right-of-first refusal in the assignment document. Therefore, even though the current record title holder wants to relinquish such a Federal coal lease, the record title holder must first try to locate the original assignor(s) to determine whether it still exists and if so, whether the original assignor wants to have such Federal coal leases reassigned to it.

This is a time-consuming process as to both determinations. It is further complicated by the fact that the original assignor, if found and if it wants the Federal coal leases to revert to it, must be able to obtain sufficient bonds in order for the executed assignment to be submitted to the appropriate Bureau of Land Management State Office for approval. Therefore, 43 CFR 3472.1–2(e)(4) has been revised for this specific situation to allow the filing of a relinquishment by the current record title holder of such a Federal coal lease, conditioned on the execution of lack thereof, of the reassignment to the original assignor only where a right-of-first-refusal can be demonstrated to be the sole reason for the filing of the conditional request for relinquishment.

In such cases, the Bureau of Land Management will not act on the relinquishment request because it does not control the execution of such a reassignment. However, the current record title holder will also have to file a simultaneous request for arm's-length assignment. This action will allow the Bureau of Land Management to issue a request to the potential assignee(s) for further information and/or execution and submittal of the assignment document and the posting of a bond sufficient to allow the assignment to be approved. If the potential assignee(s) (i.e., the original assignor(s) that retained the right-of-first-refusal) does not comply with the Bureau of Land Management's request within 30 calendar days from date of receipt of the request, the Bureau of Land Management will disapprove the assignment and act on the pending relinquishment request. The failure of the potential assignee(s) (i.e., original assignor(s) retaining the right-of-first-refusal) to comply with the Bureau of Land Management's request removes the condition from the conditional request for relinquishment of the Federal coal lease. This rulemaking modifies the 90–day period for submittal of applications for approval of a lease transfer for those tranfer applications submitted by the potential assignees within this limited category. These comments were accepted, as modified.

3. *Producing.* Several comments stated, in essence, that the definition of "producing" fails to reflect the reality of mining by severely restricting the exceptions to its "daily" severance requirements. The comments stated that the Department of the Interior failed to take into account that there are many events which regularly occur in the course of an ongoing mining operation that result in the temporary cessation of actual coal production. The comments suggested that the list of general exceptions be broad enough to take into account mining-related occurrences that customarily and in the course of coal

production necessitate the temporary cessation of mining activities. Such variances include, but are not limited to: 4-day work weeks; miners' vacations; temporary, limited shutdowns for equipment maintenance; withdrawal of closure orders under the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 814(b) and (d), and § 817(a)); cessation orders under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1271(a)(2)); temporary, limited shutdown of a customer's power plant; contract requirements stating that mining only take place intermittently; and formal lease suspensions under section 39 or section 7(b) of the Mineral Leasing Act. In addition, the comments pointed to temporary, limited *force majeure* mine closing, which may result from strikes by rail workers or truck drivers, coal buyer's operations of its power plants that require the coal buyer to temporarily stop taking coal shipments for a limited duration of time, and labor disputes.

It was not the intent of the proposed rulemaking to compromise standard industry operating practices. That is why the rulemaking was couched in terms of "such reasons as," not "the following reasons." Allowing standard industry operating practices to govern "producing" is less burdensome to the mining industry and more administratively efficient for the Bureau of Land Management. It also provides a satisfactory basis from which the Authorized Officer can determine whether the mining operation is "producing". Under this approach, the Authorized Officer will determine whether the mining operation is "producing" in accordance with the approved plan of operations. Standard industry operating practices will be used as the primary basis for determining whether the mining operation is "producing;" but it must be stressed that conformity with standard industry operating practices is not dispositive of "producing," and variances from the practices may be required where case-specific conditions warrant such a variance. However, the burden of establishing that a mining operation is "producing" is on the operator/lessee. Cessation of production for reasons of *force majeure* do not exempt the lessee from section 2(a)(2)(A), unless production is suspended under section 7(b) after the lease becomes subject to the amended Mineral Leasing Act. It should be noted that interruptions of mining operations due to such events as floods, mine fires, and roof falls or rock bursts, may be sufficient cause to apply for a section 39 suspension of operations and production.

The definition of "producing" has been revised to reflect the original intent of the proposed rulemaking, as discussed above. As one comment accurately stated: "The purpose of Congress in enacting section 3 [sic] was to eliminate perceived speculation in federal coal where much coal was leased at low cost and few mines were opened as the 'speculators' waited for the price of coal to rise. Beginning a mine operation requires substantial investment. The lessee has significant costs and has no reason not to mine." The Department of the Interior agrees with these statements.

One comment questioned whether "sale of coal from stockpiles" referred to the market transaction or to the physical removal of coal. "Sale of coal from stockpiles" was intended to refer to the market transaction and the proposed rulemaking's intent was to differentiate that type of transaction from "coal is being processed, loaded, or transported from the point of severance to point of sale." See also the responses to the previous documents, above.

One comment stated that the proposed rulemaking would significantly expand the clear requirement of section 2(a)(2)(A) to make production in commercial quantities a requirement for the duration of the subject lease. The comment continued: "No statutory, legislative history, or practical reasons is [sic] presented by BLM, and none is available, to support such an expansion of the law." This comment ignores the clear, express language of section 2(a)(2)(A) (30 U.S.C. 201(a)(2)(A)), which states, in part: "when such entity *is not*, except as provided for in section 7(b) of this Act, *producing* coal from the lease deposits in commercial quantities . . ." (emphasis added) as opposed to stating "when such entity has not . . . produced coal from the lease deposits in commercial quantities." Congress phrased section 2(a)(2)(A)'s producing requirement in the present tense and thus clearly intended that this requirement continue for the duration of the subject lease. It should be noted, as discussed in the *General Discussion, General Comments,* and *Specific Comments,* number 2., above, that there is, at certain times and under specific circumstances, statutory relief available from the continuing section 2(a)(2)(A) requirement to be producing coal in commercial quantities.

4. *Control.* One comment, noting that the Office of Surface Mining and the Minerals Management Service are also considering ownership/control regulations relating to coal activities, stated: "I urge you to coordinate with the Office of Surface Mining and the Minerals Management Service. A single definition may not be appropriate for all 3 agencies. However, the impacts of different definitions should be recognized and acknowledged."

The following discussion concerns the "controlled by or under common control with" language of section 2(a)(2)(A) of the Mineral Leasing Act. Language identical to that quoted in the previous sentence is contained in the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1257(b)(5)). The Office of Surface Mining Reclamation and Enforcement proposed regulations related to it control concept on April 5, 1985 (50 FR 13724), and reproposed those regulations for further consideration April 16, 1986 (51 FR 12879).

The Minerals Management Service intends to propose regulations on coal product valuation in the near future. That proposal will also address a control concept.

The Bureau of Land Management will continue to work closely with both the Office of Surface Mining Reclamation and Enforcement, the Minerals Management Service, and the Office of the Solicitor to determine the appropriate control concepts for all 3 Federal agencies. The responses to the comments addressed below relate solely to the language of section 2(a)(2)(A) of the Mineral Leasing Act, not the Surface Mining Control and Reclamation Act of 1977, and are not intended to resolve or address any issues currently before the Office of Surface Mining Reclamation and Enforcement or the Minerals Management Service.

One comment was highly supportive of the proposed control concept.

All comments focused on the degree of ownership that will create a presumption of control—ownership of 20 through 50 percent of the instruments of ownership of the voting securities of an entity. Most of the comments were concerned about stock ownership in companies and stated that, rather than creating a presumption of control, ownership of 20 through 50 percent should create a presumption of noncontrol unless the owner has a majority representation on the board of directors or by some other arrangement has actual control of the corporation. Several of these comments cited cases in which courts stated that stock ownership alone, when less than a majority, did not necessarily demonstrate control of the company. See, e.g., *United States* v. *Carr*, 543 F.2d 1042, 1050 (2d Cir. 1976); *Gilbert* v. *El*

Paso Company, 490 A.2d 1050, 1055, (Del.Ch. 1984); *Kaplan* v. *Centrex Corp.*, 284 A.2d 119, 122–23 (Del.Ch. 1971). The Department of the Interior does not disagree with statements in the above-cited decisions that stock ownership of less than a majority does not necessarily demonstrate control of the corporation. That is why the Department of the Interior's 20 through 50 percent category only creates a presumption of control. The cited cases, however, only indicate that it may not be possible to determine who or what entity has the ultimate control, not that it is inappropriate to presume control. Moreover, as noted in Solicitor's Opinion M–36951, several courts have found that actual control exists when the single largest stockholder owns less than the majority of the voting interests in the corporation. See *Securities and Exchange Commission* v. *R.A. Holman & Co.*, 377 F.2d 665, 667 (2d Cir. 1967); *Gottesman* v. *General Motors Corp.*, 279 F.Supp. 361, 368 (S.D. N.Y. 1967). If an entity does not believe that the presumption of control is applicable to it, then it can provide information rebutting the presumption or declaring who, in fact, is in control.

The presumption of control can be rebutted by evidence that the single largest shareholder is incapable of control or has consistently been denied control by block voting of smaller shareholders. However, the burden of proof of noncontrol properly rests with the owner of the 20 through 50 percent interest, not with the Bureau of Land Management or some third party, neither of which has the information on which a control determination can be accurately made. The Department of the Interior is not under the obligation to investigate these entities, and any of their affiliates. The lease applicant is under the obligation to show that it is qualified. The presumption standard adopted here materially aids making such determinations to carry out this responsibility.

The comments that criticized the Department of the Interior's standards for *Presuming* control do not persuade the Department that the standards for *Presumption* are inappropriate. Rather, they simply demonstrate the variety of circumstances in which the *Presumption* could be rebutted because "actual control" will, after scrutiny, be determined to be different than what one *presumes* upon initial examination. The Department of the Interior recognizes that, under a variety of circumstances, *proper proof will rebut the presumption*. The *presumption*, however, serves the purpose of identifying those situations in which rebuttal evidence should and must be submitted for competent determinations of control to be made.

Other comments on the presumption of control definition argued that partners owning less than a majority of the partnership, or limited partners who may have contracted with general partners to manage the partnership, should not be presumed to be in control. One comment further stated that "[m]anagement control, contract mining operations operator responsibility, and other relationships that constitute control for a large proportion of corporations are simply ignored by the proposed rulemaking."

Congress did not require the Department of the Interior to determine control by examining management committees or other management or contract arrangements. It only dealt with the instruments of ownership of an entity. Moreover, simply because limited partners or corporations have contracted with other entities to manage their ownership interests, this does not necessarily insulate them from retaining actual control of the partnership, corporation, contractor, or operator. Although limited partners may not generally exercise control over the partnership's activities, the final rule does not address this or any other specific management arrangement. If "control" is as obviously absent as the comments suggest, it should be a relatively simple matter for a lease applicant to rebut the presumption.

Again, the 20 through 50 percent category only creates a *presumption* of control, which the affected entity has an opportunity to rebut through the submission of evidence that it, in fact, is not in control of the entity holding the section 2(a)(2)(A) noncompliance coal lease.

Another comment stated that an owner of a 20 through 50 percent interest in an entity, who is not exercising actual control over that entity but who has the "theoretical" ability to control it in the future (e.g., by electing a new board of directors), should not be presumed to be in control. The Department of the Interior is interested in development of coal leases. If an entity has in its power the ability to develop a coal lease through restructuring the management of an entity in which it has a 20 through 50 percent interest (see *Essex Universal Corp.* v. *Yates*, 305 F.2d 572 (2d Cir. 1962)), it can avoid the section 2(a)(2)(A) prohibition against new mineral lease issuance under the Mineral Leasing Act by exercising that power. Thus, the Department of the Interior does not adopt the comment that control cannot be presumed simply because the single largest shareholder has failed to assume actual management control of the lease holding company. The Department of the Interior will continue to presume that control is in the hands of the company owning the largest single block of stock or other instruments of ownership in a publicly traded or widely held corporation. However, again, the *presumption* of control *can be rebutted* by submission of evidence that such an entity, in fact, does not have the power to exercise such control.

Another comment stated that it was inappropriate for the Solicitor in Opinion M–36951 to cite two cases discussing "control" "that may be appropriate in the context of securities violations, farm investment credit and some Internal Revenue Service applications" because Interior is dealing with a different problem than the statutes and regulations related to those areas. As noted above, Congress was silent as to the definition of "control" in the amendments to the Mineral Leasing Act enacted in the Federal Coal Leasing Amendments Act of 1976. It thus left that definition to the Secretary's discretion. The Department of the Interior believes it is better, and more reasonable and appropriate, in establishing the criteria to determine control or presumption of control, to look to other Federal statutes, their implementing regulations, and court decisions related to those statutes and regulations, which have dealt with this issue and have established standards by which to make "control" determinations.

If an entity does not believe that the presumption of control is applicable, then it is up to the entity to provide information rebutting the presumption or declaring who, in fact, is in control. The Department of the Interior prefers to avoid erroneously disqualifying an entity that does not control other entities, or any of their affiliates, that hold noncompliance Federal coal leases. The burden of proof, however, is on the lease applicant. A lease applicant that does not provide rebuttal information or otherwise declare who controls the corporation through ownership of stock or other instruments of ownership is agreeing that, if the Department of the Interior applies its presumption of control, the Department of the Interior will correctly identify who is in control of the entity, and any of its affiliates. The self-certification process at 43 CFR 3472.1–2(e)(2) has been amended to reflect this procedure.

Another comment stated that the term "interest" in a Federal coal lease should be applied from the standpoint of those

entities that control the "working" interest in a lease, because this is the interest which can actually develop the lease. The Department of the Interior agrees, and has revised its "hold and has held" definition to indicate that working interests, rather than property interests (which could include nonparticipating interests), are the "holding" interests subject to section 2(a)(2)(A). However, this comment does not affect the definition of "control," because "control," as used in section 2(a)(2)(A), relates to the structure and ownership of the business concern which "holds" the lease, not with the lease "holding" itself. See also the responses to comments received on the "holds . . . and has held" provision of the proposed rulemaking below.

One comment challenged the use of 20 percent as the lowest limit for percentage in the presumption of control category, contending that "BLM's proposal would, therefore, unduly narrow the effect of the statute without explanation, analytical support, or even the presentation of a rudimentary legal theory to support this untenable change in the Department's position." First, there has been no change in the Department of the Interior's position.

This is the first time that the Department of the Interior has promulgated a final rulemaking dealing with the issue of control for the purposes of lease-issuance qualification under section 2(a)(2)(A) of the Mineral Leasing Act. Second, the 10 percent ownership of stock or other instruments of ownership relates solely to acreage attribution, 30 U.S.C. 184(e). Acreage attribution has nothing to do with corporate management control or affiliation. If the Congress had intended for the Department of the Interior to use acreage attribution as the basis for defining control for the purpose of lease-issuance qualification, the Congress would have so ordered the Secretary of the Interior by statute. However, in the absence of such an order from Congress, the 10 percent used for acreage attribution bears no relevance to control because Congress established the 10 percent merely to avoid the "administrative nightmare" of *pro rata* acreage attribution to each stock owner in a corporation. S. Rep. No. 1549, 1960 U.S. Code Cong. & Ad. News 3313, 3325. Although this comment was rejected, it does serve as the basis for the following discussion regarding how the lowest limit of "20 percent" for the "20 through 50 percent" was derived, constituting the presumption of control.

The Department of the Interior had to choose a number less than 50 percent as a lowest limit of percentage for the presumption of control. The fact that it may be hard to justify selecting one number over the rest of the numbers in a given range does not prohibit the Department of the Interior from selecting a lowest limit. The Department of the Interior did not want arbitrarily to exclude any percentage that has been held to constitute control. See *Gottesman* v. *General Motors Corp.*, supra, where 23 percent stock ownership constituted control. Therefore, the Department of the Interior chose a lowest limit that is less than the 23 percent in *Gottesman*, but preserved the right of entities to rebut the presumption. Also, the Department of the Interior should not make a selection that excludes one of the potentially more controversial ownerships, when the opportunity to rebut the presumption of control is clearly provided to any entity affected by the lowest limit.

Also, the definition has been amended to provide that ownership less than 20 percent creates a presumption of noncontrol, rather than conclusive evidence of noncontrol. The burden of rebutting this presumption rests with the Department of the Interior. The burden of presenting rebuttal information is clearly on a party challenging a determination of noncontrol by the Department of the Interior, where there is less than 20 percent ownership of the stock or other voting securities by the entity.

Several other comments were received regarding the self-certification provisions at proposed 43 CFR 3472.1-2(e)(2) and the Authorized Officer's determination that there is compliance with section 2(a)(2)(A) on the date of lease issuance at proposed 43 CFR 3472.1-2(e)(1)ii). Most expressed concern that there appeared to be two lessee-qualification dates resulting in the lease applicant potentially having to submit 2 qualification statements. The intent of the provision was that, at the time that a lease was offered, the lease applicant would have to self-certify that it, and all of its affiliates, were not in noncompliance with section 2(a)(2)(A) of the amended Mineral Leasing Act. This is a simple clarification of the information already required to be submitted in the contents of qualification statements (see existing 43 CFR 3472.2-2). The apparent requirement for a double submission is nonexistent. On the subsequent date of lease issuance, the affected Federal coal leases must be producing in commercial quantities in order for the lease applicant to be qualified to be issued the lease. The determination that the affected Federal coal leases are in compliance is made by the Authorized Officer both on the date of determination of lessee qualification and on the date the lease is issued. This is because the date that the Authorized Officer makes the determination of lessee qualifications normally precedes the date of lease issuance. There is no requirement for a dual submission of information on the part of the lease applicant. These comments were rejected.

5. *Holds and Has Held.* Several comments received on this issue questioned Solicitor's Opinion M-36951, the draft and final implementation guidelines for section 2(a)(2)(A), and the proposed rulemaking. The major concern was that a Federal coal lessee's holding period should not be attributable to the ultimate parent corporation or any of its affiliates or subsidiaries. The Department of the Interior is not persuaded by any of the arguments presented regarding this specific issue to reexamine the Solicitor's Opinion M-36951 for possible revision on this issue nor to reexamine Appendix C to the final guidelines for implementation of section 2(a)(2)(A) of the Mineral Leasing Act. In fact, the Department of the Interior believes it appropriate here to repeat a portion of that Appendix C in this **SUPPLEMENTARY INFORMATION** for clarification of how the "holds . . . and has held" provision is attributable to corporate entities, and any of their affiliates or subsidiaries from the aspect of "controlled by or under common control with." See the following 3 paragraphs.

The legislative history and administrative interpretation of section 11 of the Federal Coal Leasing Amendments Act of 1976 are particularly relevant in interpreting section 2(a)(2)(A) of the Mineral Leasing Act, because the language used in both sections is identical. The legislative history of section 11 states, in part, that "[t]he purpose . . . of this language is to assure that the restrictions . . . are not circumvented by the formation of holding companies, or other devices of corporate organization." H.R. Rep. No. 94-687, 94th Cong., 1st Sess. 25 (1975) It is apparent from the plain language of section 2(a)(2)(A) and the legislative history of section 11 that "control" is the key concept through which ownership of a Federal coal lease will be attributed to related corporate entities. The phrase "controlled by or under common control with such person, association, or corporation" modifies the words "subsidiary," "affiliate," and "persons." Therefore, when a chain of corporate

ownership is involved, the question is whether a given corporation is "controlled by or under common control with" a related corporation. If there is sufficient control of a corporation by another corporation, related corporations in the corporate chain will be charged with ownership of the Federal coal lease. This analysis is consistent with the Department of the Interior's established interpretation of section 11 of the Mineral Leasing Act. See 46 FR 61390, 61403 (1981). The question of whether a particular entity is "controlled by or under common control with" another entity for purposes of section 2(a)(2)(A) will have to be determined on a case-by-case basis at the time that qualifications are being determined for a Federal lease issuance on or after December 31, 1986.

Actual control of a corporation will often exist without ownership of a majority of the corporation's voting stock. Ownership of less than 50 percent may provide actual control where stock ownership or other instruments of ownership are widely dispersed. These determinations will necessarily have to be made on a case-by-case basis.

Generally, the application of section 2(a)(2)(A) to a Federal coal lease holding entity will not be affected by a corporate reorganization of the entity. This is true even if the reorganized entity is renamed. In addition, if a Federal coal lessee in violation is acquired by a corporation, resulting in a parent-subsidiary structure, the section 2(a)(2)(A) violation will automatically run to the parent corporation. This is because the section 2(a)(2)(A) leasing prohibition runs up and down a chain of corporate ownership. That is, a parent's violation is charged to a controlled subsidiary and a subsidiary's violation is charged to a controlling parent, as well as to any other subsidiary commonly controlled by that parent. These comments were rejected.

One comment agreed that the time of ownership or control of a Federal coal lease must be counted in a cumulative manner. The comment also agreed that "the regulations must provide that holding a mined-out lease would not subject the lease holder to disqualification for new leases." Another comment stated that, with respect to holding mined-out Federal coal leases, the regulation should be expanded to apply to all circumstances which may necessitate retention of the lease after all recoverable coal reserves have been mined out. The Department of the Interior believes that the use of the term "for such purposes as" encompasses this concern (see 43 CFR 3472.1–2(e)(5)). Therefore, although the Department of the Interior agrees with this comment, there is no need to amend the proposed 43 CFR 3472.1–2(e)(6) in this final rulemaking, except to redesignate the paragraph number.

One comment stated that the regulation regarding mined-out Federal coal leases was "too limiting in that it requires that the lease be mined out. A mine can be forced to close even though all recoverable reserves have not been mined. This section should be expanded to allow for the reclamation of a lease even if the lease has not been mined out." The comment provided no specific examples for such an occurrence. This comment was rejected because it would run afoul of the Mineral Leasing Act's requirement that the Secretary of the Interior must ensure that maximum economic recovery is achieved.

One comment stated that the "statutory language of section 2(a)(2)(A) states that the Secretary shall not issue a lease to any person or entity 'where any such entity holds a lease or leases issued by the United States to coal deposits.' Holding a lease is not the same as "any property interest in a lease." Another comment stated that the "guidelines referred mainly to a holder of 'record title' whereas the proposed regulations talk about 'any property interest'—a broader concept." The concept of "holding" a lease within the meaning of section 2(a)(2)(A) is limited to a working interest, versus other types of interests, as discussed in the responses to comments received, in the **SUPPLEMENTARY INFORMATION,** *Specific Comments,* number 4., on the issue of "control." "Holding" a lease is clearly broader than owning a record title interest, as shown by the language used in section 27(a) of the Mineral Leasing Act, 30 U.S.C. 184(a), where Congress directed that no entity shall "take, own, hold or control" leases in excess of a maximum acreage limit. Congress repeated this phrasing when it amended section 27(a) in section 11 of the Federal Coal Leasing Amendments Act. However, in section 2(a)(2)(A), Congress chose to focus on entities that "hold" a lease, their affiliates and those who "control" such entities rather than merely those who "own" a lease. The final rulemaking therefore revises this definition to include only "working interests" and also to include arrangements where an entity may not own the record title but yet "holds" the right to develop the coal.

6. *Oil and Gas Lease Qualifications and Assignments.* Several comments stated that it appeared that the Department of the Interior was not intending to enforce the provisions of section 2(a)(2)(A) on oil and gas leases. The comments stated that the Department intended to rely on an "honor" system whereby it was presumed that lease applicants would state their compliance with section 2(a)(2)(A) upon application for a lease. In lieu of the "honor" system, it was suggested that the Department of the Interior require applicants to certify their compliance with section 2(a)(2)(A) and that the lease include a stipulation or lease term providing for lease cancellation if the lessee is later found to have been in violation of section 2(a)(2)(A) of the amended Mineral Leasing Act when the lease was issued.

The Department of the Interior, in fact, has already begun active enforcement of the section 2(a)(2)(A) provisions in the oil and gas leasing program. This approach does not rely on an "honor" system but rather on actual lessee compliance with section 2(a)(2)(A). Key elements include:

(1) Weekly updates by Bureau of Land Management personnel of parties who are in potential violation of section 2(a)(2)(A) based on the status of coal actions.

(2) Modification of the oil and gas lease form 3100–11 to include a specific lease term providing for the signatory to certify actual compliance with section 2(a)(2)(A) prior to lease issuance. Parties who falsely certify are subject to the stated lease cancellation provisions and the criminal provisions of 18 U.S.C. 1001.

(3) Revisions of the current regulations at 43 CFR 3102 to include compliance with section 2(a)(2)(A) as a specific Leasing Qualification. Language will also be added to give emphasis to the fact that leases issued in violation of section 2(a)(2)(A) are subject to the cancellation provisions at 43 CFR 3108.3.

Several comments stated that the proposed amendments to 43 CFR 3102.5 implied that all oil and gas lease assignment actions as well as lease issuance are subject to the provisions of section 2(a)(2)(A). They correctly pointed out that the Department of the Interior has determined that section 30a of the Mineral Leasing Act does not grant to the Secretary any discretion to apply the section 2(a)(2)(A) sanction to oil and gas lease transfers. The Department of the Interior agrees that the original language could have been so misinterpreted and has revised 43 CFR 3102.5 to clarify this point in this final rulemaking.

7. *Apparent Conflicts Between Specific Provisions of Proposed 43 CFR 3472.1–2(e).* Several comments stated that proposed 43 CFR 3472.1–2(e)(7)(iii)

required that each Federal coal lease be producing and was silent on allowing payment of advance royalty in lieu of continued operation or available suspension relief from the producing requirement. Proposed 43 CFR 3472.1–2(e)(7)(iv), which applied to all of 43 CFR 3472.1–2(e)(7), cross-referenced the proposed paragraph (e) (1), (4), or (6) relief-from-production obligations. Specifically, the advance royalty in lieu of continued operation and the relief-from-production-due-to-suspension language is contained at the cross-referenced 43 CFR 3472.1–2(e)(1)(i). This final rulemaking remains unchanged regarding that cross-reference, except that the section number has been redesignated. These comments were rejected.

These same comments, however, pointed out that there was no such cross-reference to the relief-from-production language at proposed 43 CFR 3472.1–2(e)(5). That was an inadvertent omission in the proposed rulemaking and has been corrected by redesignating this provision as part of § 3472.1–2(e)(6) in this final rulemaking.

Several comments also stated that proposed 43 CFR 3472.1–2(e)(3) "is broader than the other proposed rules. . . . It is recommended that this rule be limited to those seeking to acquire a new lease issuance and apply only to additional information regarding the section 3 [sic] compliance certification." As written, the proposed 43 CFR 3472.1–2(e)(3) was self-limited in this regard by inclusion of the words "further evidence of compliance with the qualifications of this subpart." The words "special leasing" have been inserted before "qualifications" in the final rulemaking for further clarification.

Two comments suggested that proposed 43 CFR 3400.0–5(vv) be revised by replacing the phrase "that is in no way affiliated with" to "that is not an affiliate of" in the definition of "Arm's-length transactions." This point has merit. However, it was pointed out in other comments that the Department of the Interior had defined the term "Affiliate" in terms of itself. Therefore, the definition for the purposes of section 2(a)(2)(A) of the Mineral Leasing Act for "affiliate" has been replaced with a definition for the purposes of section 2(a)(2)(A) of the Mineral Leasing Act of "entity," which will now be used in place of the phrase "entity, or any of its affiliates" throughout the final rulemaking, and the other definitions and regulatory provisions have been revised accordingly. These comments were accepted.

One comment suggested that the following language be inserted at 43 CFR 3472.1–2(e)(1)(i): "A lease shall not be considered to be held during any period when it is subject to a suspension under Part 3400 [sic] of this title." This addition is not necessary because under a section 39 or amended section 7(b) suspension, the section 2(a)(2)(A) production requirement is tolled for the duration of the suspension. This comment was rejected.

Three comments suggested that the following language be added after the words "purposes as reclamation" at 43 CFR 3472.1–2(e)(5): "or any activities associated with an ongoing mine . . .." This was suggested because it "would allow the inclusion of circumstances such as access to another operating lease where there is no logical mining unit." The words at proposed 43 CFR 3472.1–2(e)(6) stating "for such purposes as" encompass this aspect for mined-out Federal coal leases. However, if the lease has not been mined out, is not producing coal in commercial quantities, and is being solely used for access to another Federal coal lease, the nonproducing lease would disqualify the lessee, and any of its affiliates, from being issued another Federal lease granted under the Mineral Leasing Act. These comments were rejected.

One comment stated that if "we read § 3472.1–2(e)(7) for any general proposition, it is for the principle that 'once qualified, always qualified' for purposes of section 3 [sic]. As we have argued in the past, we strongly believe that Congress envisioned a single qualification process for purposes of assuring compliance with section 3 [sic]. Once a lessee qualifies for issuance of a new lease (at the time of new lease issuance), there is no reason to require additional qualification in the future. To do so would work harsh, unintended and, in some cases, inconsistent results." As proposed, and as retained in this final rulemaking, 43 CFR 3472.1–2(e)(6) states that the lease does not prohibit the lessee from being issued Mineral Leasing Act mineral leases as long as it is producing or as long as the producing obligation is being satisfied by statutory relief. 43 CFR 3472.1–2(e)(6) does not state "once qualified, always qualified" and the statement regarding the intent that the "Congress envisioned a single qualification process for purposes of assuring compliance with section 3" is not supportable when the plain, express language of the Mineral Leasing Act states otherwise. The relevant part of section 2(a)(2)(A) states: "when such entity *is not*, except as provided for in section 7(b) of this Act, *producing* coal from the lease deposits in commercial quantities . . .," as opposed to referring to a completed event. It refers to an ongoing condition. Section 2(a)(2)(A)'s requirement that coal be produced in commercial quantities is a requirement for the duration of the subject lease. This comment was rejected.

One comment stated that "the existing 43 CFR 3453.3–2(a) (1985), which provides for notice to the applicant to permit the applicant to cure application deficiencies, should be amended to provide notice to both the assignor and the assignee, no matter which party is the applicant." While this comment has merit, this final rulemaking is not the appropriate vehicle with which to address this recommendation. The Department of the Interior is examining 43 CFR Part 3480 to determine whether any changes to the existing regulations are necessary. This comment will be considered during that examination.

One comment stated: "Under the language of proposed 43 CFR [sic] § 3472.1–2(e)(4)(i)(C), the applicant for the LMU or its affiliate would be disqualified under section 3 [sic]. The reason for disqualification will be lack of production before any production is required by section 3. It would appear that the wording should be altered to read: 'the authorized officer determines the LMU would be producing in commercial quantities on the date the first lease in the LMU is held for ten years as provided in paragraph (e)(1)(i) of this section or the effective date of the LMU, whichever is later." As proposed, 43 CFR 3472.1–2(e)(4)(i)(C), applied solely to logical mining units that were being formed and which would contain a Federal coal lease that would *otherwise disqualify* the Federal coal lessee under section 2(a)(2)(A) because it has been held for 10 years and is not producing in commercial quantities. Therefore, the comment has misread the proposed rulemaking and the language has not been changed in this final rulemaking. This comment was rejected.

One comment stated that the "proposed rule is silent on coal lease assignments, but we believe the intent is to employ the self-certification process for determining compliance for coal lease assignments as well as MLA lease issuance." As proposed, 43 CFR 3472.1–2(e)(2) stated, in part: "seeking to obtain an interest in a lease . . . ." As used throughout 43 CFR Group 3400, the term "lease" means any Mineral Leasing Act Federal coal lease. An assignment is the transfer of an interest in the lease. Such transfers of Federal coal leases are prohibited to entities disqualified under section 2(a)(2)(A) by existing regulation. Therefore, the basic assumption in this

comment is correct. The intent is to also apply the self-certification process for determining compliance for Federal coal lease assignments as well as a Federal coal lease issuance.

One comment stated that should the proposed 43 CFR 3472–1–2(e)(4)(iii) "rule be retained, we believe that the word 'adverse' in 'adverse decision' must be explained. We suspect the word is intended to refer to a disapproval of the application; however, at least for an LMU application, disapprovals are not the only reason for appeal. The applicant may receive an approval and still take issue with and appeal other decisions associated with approval, such as the recoverable reserves estimate. . . . If the proposed rule is not deleted, it, at a minimum, should be worked so that only IBLA appeals of application disapprovals lift the section 3 [sic] immunity. The apparent intent of this provision—to prevent lessees from automatically filing IBLA appeals to preserve their immunity—is not applicable in the case of an IBLA appeal of an approved application, since the approval itself has already extended the immunity." The term "adverse" is clearly intended to be a disapproval of any of the 3 pending actions. If the logical mining unit is approved, then an adverse decision on the pending request for approval is not at issue. However, this comment confuses approval of a logical mining unit containing a Federal coal lease that would otherwise disqualify the lessee under section 2(a)(2)(A) with an extension of immunity from the section 2(a)(2)(A) lease-qualification provision. This is clearly a misunderstanding. Such an approved logical mining unit only "protects" such Federal coal leases contained in the approved logical mining unit if the logical mining unit recoverable coal reserves are being produced. If the logical mining unit is not producing, the lessee would be disqualified from lease issuance pursuant to section 2(a)(2)(A).

Editorial changes have been made as necessary.

The principal authors of this final rulemaking are Allen B. Agnew and Pamela J. Lewis, Division of Solid Mineral Operations, and Rob Cervantes, Division of Fluid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, and the Office of the Solicitor, Department of the Interior.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The economic impact of this rulemaking is not significant and its impact will fall equally on all affected entities, whether large or small.

This proposed rulemaking contains no information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects

43 CFR Part 3100

Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3400

Administrative practice and procedure, Coal, Government contracts, Intergovernmental relations, Mines, Public lands—mineral resources.

43 CFR Part 3470

Coal, Government contracts, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3500

Government contracts, Mineral royalties, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 3100, Group 3100, Parts 3400 and 3470, Group 3400 and Part 3500, Group 3500, all of Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations, are amended as set forth below:

December 2, 1986.

James E. Cason,

Acting Assistant Secretary of the Interior.

PART 3100—[AMENDED]

1. The authority citation for Part 3100 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 760 et seq.), the Act of May 21, 1930 (30 U.S.C. 301–306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96–514), the Refuge Administration Act of 1966 (16 U.S.C. 668dd–ee), the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a) and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

§ 3102.5 [Amended]

2. Section 3102.5 is amended by removing from where it appears the phrase "and (d)" and replacing it with the figure "(d)" and by removing the period at the end of paragraph (d) and adding the phrase "; and (e) except for an assignment or transfer under Subpart 3106 of this title, in compliance with section 2(a)(2)(A) of the Act (compliance is determined for Federal coal leases in accordance with § 3472.1–2(e) of this title), in which case the signature on an application or lease constitutes evidence of compliance. A lease issued to any entity in violation of this paragraph (e) shall be subject to the cancellation provisions at § 3108.3 of this title. The term 'entity' is defined at § 3400.0–5(rr) of this title."

PART 3400—[AMENDED]

3. The authority citation for Part 3400 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

4. Section 3400.0–5 is amended by adding new paragraph (rr) to read:

§ 3400.0–5 Definitions

* * * * *

(rr) For the purposes of section 2(a)(2)(A) of the Act:

(1) "Arm's length transaction" means the transfer of an interest in a lease to an entity that is not controlled by or under common control with the transferor.

(2) "Bracket" means a 10-year period that begins on the date that coal is first produced on or after August 4, 1976, from a lease that has not been made subject to the diligence provisions of

Part 3480 of this title on the date of first production.

(3) "Controlled by or under common control with," based on the instruments of ownership of the voting securities of an entity, means:

(i) Ownership in excess of 50 percent constitutes control;

(ii) Ownership of 20 through 50 percent creates a presumption of control; and

(iii) Ownership of less than 20 percent creates a presumption of noncontrol.

(4) "Entity" means any person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation.

(5) "Holds and has held" means the cumulative amount of time that an entity holds any working interest in a lease on or after August 4, 1976. The "holds and has held" requirement of section 2(a)(2)(A) of the Act is lessee-specific for each lease. "Working interest" includes both record title interests and arrangements whereby an entity has the ability to determine when, and under what circumstances, the rights granted by the lease to develop coal will be exercised.

(6) "Producing" means actually severing coal, or operating an ongoing mining operation in accordance with standard industry operation practices. A lease is deemed to be producing, even though:

(i) Severance is temporarily suspended for reasons beyond the reasonable control of the operator/lessee, as that term is defined at § 3480.0–5(a)(2) of this title, including but not limited to factors such as: Dragline or other equipment moving, breakdown, or repair; overburden removal; sale of coal from stockpiles; vacations and holidays; orders of governmental authorities; and failure of customers to take coal; or

(ii) Severed coal is being processed, loaded, or transported from the point of severance to the point of sale.

PART 3470—[AMENDED]

5. The authority citation for Part 3470 continues to read:

Authority: 30 U.S.C. 181 et seq. and 30 U.S.C. 351–359.

6. Section 3472.1–2(e) is revised to read:

§ 3472.1–2 Special leasing qualifications.

* * * * *

(e)(1)(i) On or after December 31, 1986, no lease shall be issued and no existing lease shall be transferred, to any entity, that holds and has held for 10 years any lease from which the entity is not producing the coal deposits in commercial quantities, except as authorized under the advance royalty or suspension provisions of Part 3480 of this title, or paragraphs (e)(4) or (5) of this section.

(ii) An entity seeking to obtain a working interest in a lease, or approval of a transfer under subpart 3453 of this title, shall qualify both on the date of determination of lessee qualifications and on the date the lease is issued or transfer approved.

(iii) Once a lease has been issued to a qualified entity or transfer approved for a lease under subpart 3453 of this title, disqualification at a later date shall not result in surrender of that lease, or recision of the approved transfer, except as provided in paragraph (e)(4) of this section.

(2)(i) Any entity seeking to obtain a lease or approval of a transfer of a lease pursuant to 43 CFR Group 3400 of this title shall certify, in writing, that the entity is in compliance with the Act and the requirements of this subpart. The entity's self-certification statement shall include:

(A) A statement that the entity is qualified to be issued a lease or to have a transfer approved in accordance with the presumption of control or the presumption of noncontrol requirements at § 3400.0–5(rr) of this title, and in accordance with the producing requirements at paragraph (e)(6) of this section;

(B) Justification rebutting the presumption of control requirements at § 3400.0–5(rr) of this title, if the entity's instruments of ownership of the voting securities of another entity or of its voting securities by another entity are 20 through 50 percent. The authorized officer, based on the written self-certification statement and other relevant information, shall determine whether the entity has rebutted the presumption of control.

(ii) If a lease is issued, or a transfer approved under subpart 3453 of this title, to an entity based upon an improper, written self-certification of compliance, the authorized officer shall administratively cancel the lease, or rescind the approved transfer, after complying with § 3452.2–2 of this title.

(3) The authorized officer may require an entity holding or seeking to hold an interest in a lease, to furnish, at any time, further evidence of compliance with the special leasing qualifications of this subpart.

(4)(i) An entity, seeking to qualify for lease issuance, or transfer approval under subpart 3453 of this title, shall not be disqualified under the provisions of this subpart if it has one of the following actions pending before the authorized officer for any lease that would otherwise disqualify it under this subpart:

(A) Request for lease relinquishment; or

(B) Application for arm's-length lease assignment; or

(C) Application for approval of a logical mining unit that the authorized officer determines would be producing on its effective date.

(ii) Once a lease has been issued, or transfer approved, to an entity that qualifies under paragraph (e)(4)(i) of this section, an adverse decision by the authorized officer on the pending action, or the withdrawal of the pending action by the applicant, shall result in termination of the lease or recision of the transfer approval. Such decision of the authorized officer shall be effective, regardless of appeal of that decision. The possibility of lease termination shall be included as a special stipulation in every lease issued to an entity that qualifies under paragraph (e)(4) of this section.

(iii) The entity shall not qualify for lease issuance or transfer under paragraph (e)(4)(i) of this section during the pendency of an appeal before the Office of Hearings and Appeals from an adverse decision by the authorized officer on any of the actions described in paragraph (e)(4)(i) of this section.

(iv)(A) Where an entity, qualified under this section, had an approved transfer of a lease under subpart 3453 of this title, the transferor retained a right-of-first-refusal, and the entity wishes to relinquish such lease if such lease would otherwise disqualify the entity under this subpart, the entity may file the relinquishment under subpart 3452 of this title. However, the entity shall:

(*1*) Submit sufficient documentation for the authorized officer to determine that, in fact, such a right-of-first-refusal exists and prevents approval or disapproval by the authorized officer of the pending relinquishment;

(*2*) Submit with the request for approval of the relinquishment a statement that action by the authorized officer on the pending relinquishment be conditioned on the execution, or lack thereof, of the assignment under the right-of-first-refusal, as well as on the approval or disapproval of the assignment, if executed, under subpart 3453 of this title;

(*3*) Submit the assignment signed by the entity as well as proof that it has been submitted to the transferor that retained the right-of-first-refusal (e.g., copy of certified mail delivery); and

(4) Submit the name(s) and address(es) of the transferor(s) that retained the right-of-first-refusal.

(B) If the authorized officer determines, based on the information supplied under paragraph (e)(4)(iv)(A) of this section, that the right-of-first-refusal prevents action on the pending relinquishment, the authorized officer will send, via certified mail, return receipt requested, a request for additional information to the transferor that retained the right-of-first-refusal. The request shall state that the transferor that retained the right-of-first-refusal shall comply with subpart 3453 of this title within 30 days of receipt. If the transferor that retained the right-of-first-refusal does not comply within the 30-day time frame, the authorized officer will:

(1) Disapprove the pending assignment and so notify the entity and the transferor that retained the right-of-first-refusal; and

(2) Process the request for relinquishment under subpart 3452 of this title.

(C) If the authorized officer determines, pursuant to the information submitted under paragraph (e)(4)(iv)(A) of this section, that the right-of-first-refusal does not prevent action on the request for relinquishment, the authorized officer will:

(1) Disapprove the pending assignment and so notify the entity and the transferor that retained the right-of-first-refusal; and

(2) Process the request for relinquishment under subpart 3452 of this title.

(5) Leases that have been mined out (i.e., all recoverable reserves have been exhausted), as determined by the authorized officer, may be held for such purposes as reclamation without disqualification of the entity, or any of its affiliates, under the provisions of this subpart.

(6)(i) The authorized officer shall determine the date of first production for the purposes of establishing the beginning of the bracket, if applicable.

(ii) An entity shall not be disqualified under the provisions of this subpart if each lease that the entity holds is:

(A) Producing and is within its bracket;

(B) Producing and has produced commercial quantities during the bracket.

(C) Producing and has achieved production in commercial quantities (an entity holding such a lease is disqualified under section 2(a)(2)(A) of the Act from the end of the bracket until production in commercial quantities is achieved), for leases which fail to produce commercial quantities within the bracket;

(D) Producing in compliance with the diligent development and continued operation provisions of Part 3480 of this title, for leases which began their first production of coal on or after August 4, 1976, after becoming subject to the diligence provisions of Part 3480 of this title;

(E) Contained in an approved logical mining unit which is producing coal in accordance with the logical mining unit stipulations of approval pursuant to § 3487.1 (e) and (f) of this title; or

(F) Relieved of a producing obligation pursuant to paragraphs (e) (1), (4), or (5) of this section.

* * * * *

PART 3500—[AMENDED]

7. The authority citation for Part 3500 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); sec. 3 of the Act of September 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b)); the Act of June 8, 1926 (30 U.S.C. 291–293); the Act of March 3, 1933, as amended (47 Stat. 1487); sec. 10 of the Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n et seq.); the Act of November 8, 1968 (16 U.S.C. 460q et seq.); the Act of October 2, 1968 (16 U.S.C. 90c et seq.); the Act of October 27, 1972 (16 U.S.C. 460dd et seq.); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm-2—460mm-4); the Independent Offices Appropriations Act (31 U.S.C. 9701).

6. Section 3502.1 is amended by adding a new paragraph (d) to read:

§ 3502.1 Who may hold leases and permits.

* * * * *

(d) Except for an assignment or sublease under § 3506 of this title, a lease for leasable minerals shall be issued only to an entity if it is in compliance with section 2(a)(2)(A) of the act (compliance is determined for Federal coal leases in accordance with § 3472.1–2(e) of this title). A lease issued to any entity in violation of this paragraph (d) shall be subject to the cancellation provisions at § 3509.4 of this title. The term 'entity' is defined at § 3400.0–5(rr) of this title."

[FR Doc. 86–27519 Filed 12–4–86; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 302

Civil Defense; State and Local Emergency Management Assistance Program (EMA)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule delegates to the FEMA Regional Directors authority to reallocate surplus EMA funds to States within their regions during the first 9 months of each fiscal year.

EFFECTIVE DATE: December 5, 1986.

FOR FURTHER INFORMATION CONTACT: John McKay, Office of Emergency Management Programs, Federal Emergency Management Agency, Washington, DC 20472 (202–646–4252).

SUPPLEMENTARY INFORMATION: The change in procedures will allow a FEMA Regional Director the authority for the first 9 months of each fiscal year to reallocate unused portions of a State's EMA allocation among the other States as, in his/her best judgment, will best assure the adequate development of the civil defense capability of the Nation. This delegation is additional to, and does not replace that of, the Associate Director for State and Local Programs and Support (44 CFR 2.61(j)(7)).

The Regional Directors need not apply the same formula for the reallocations as is done for the original allocations by the Director. Therefore, the paragraphs (l) and (m) in § 302.5 are to be revised to accommodate the redelegation from the Director to the Regional Directors to reallocate EMA funds under certain conditions.

Nonapplicability

As Federal funding to which these regulations will be applicable is less than $100,000,000 annually, the regulation is not considered to be a major regulation requiring a regulatory analysis under Executive Order 12291. The regulation also is applicable to States to which the funding is made available and, thus, is not subject to the requirements of the Regulatory Flexibility Act which is concerned with small entities. No regulatory flexibility analysis will be prepared. This amendment does not call for any collection of information requiring clearance under section 3504(h) of the Paperwork Reduction Act and, as the regulation is administrative in character, there is no requirement for environmental clearance.

Comments and Considerations

A total of eight responses were received; six were from States and two from territories. Five States and the two territories expressed total agreement with the proposed rule.

One State disagreed with the delegation to the Regional Directors based on the premise that allowing regions to reallocate EMA funds would not get funds where they are most needed.

EMA is one of the grant programs administered by FEMA through the Comprehensive Cooperative Agreement (CCA) to the States. The authority to reallocate funds to States within the regions for the first 9 months of the fiscal year has been delegated to the FEMA Regional Directors for the other CCA grant programs beginning in FY 1987. This final rule will make that authority consistent for all CCA programs and enhance fiscal management of all the programs.

One State recommended that the authority for the Regional Directors to reallocate EMA funds to States within their regions be extended at least through August 15 of each fiscal year.

Again, we feel that the delegation of reallocation authority to the Regional Directors should be consistent for all of the CCA programs. Also, in the case of the EMA program, the time required for FEMA Headquarters to solicit information from the States concerning surplus funds and additional funding requirements, and then to process the necessary reallocation documentation dictates the provision for the reallocation authority to revert to headquarters for the final 3 months of the fiscal year. The authority during that period of time offers the opportunity for alleviating funding inequities among the States that may have existed earlier in the fiscal year.

List of Subjects in 44 CFR Part 302

Civil defense, Grants programs, National defense.

Accordingly, it is proposed to amend 44 CFR, Chapter 1, Subchapter E, Part 302, Code of Federal Regulations, as follows:

PART 302—CIVIL DEFENSE—STATE AND LOCAL EMERGENCY MANAGEMENT ASSISTANCE PROGRAM (EMA)

1. The authority citation of Part 302 continues to read as follows:

Authority: 50 U.S.C. App. 2251 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12148.

§ 302.5 [Amended]

2. In § 302.5, paragraphs (l) and (m) are revised, and new paragraphs (n) and (o) are added:

* * * * *

(l) After being advised of its annual formal allocation, if a State fails to submit, within 60 days, an approvable annual submission in the amount of its allocation, the Regional Director may reallocate the unused portion to other States in the region in such amounts as in his/her judgment will best assure adequate development of the civil defense capability of the Nation. The exception to this authority is in the event a State, or local jurisdiction, refuses to participate in attack preparedness activities. EMA funds withheld or returned for that reason are to be released to headquarters for reallocation on a national basis. In addition, the Regional Director may from time to time reallocate the amounts released by a State from its allocation as no longer being required for utilization in accordance with an approved annual submission and award document.

(m) Immediate notice to the headquarters EMA Program Manager of State reallocations is required in the form of copies of EMA-approved Annual Submission amendment documents, accompanied by copies of assistance award/amendment documents signed by regional and State authorized officials of both the releasing and recipient States.

(n) There is no dollar ceiling on the amount of funds that may be reallocated among States in a region. However, at any time that there are funds surplus to the eligible needs of the States within a region, those funds should be promptly released to headquarters for reallocation to other States with unfunded additional requirements.

(o) On July 1 of each fiscal year, the authority to reallocate EMA funds shall revert to the Director. In addition, any excess EMA funds available on that date, or that become available during the remainder of the fiscal year, are to be promptly released to headquarters for reallocation by the Director.

Dated: December 2, 1986.

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 86-27326 Filed 12-4-86; 8:45 am]

BILLING CODE 6718-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

48 CFR Part 970

Acquisition Regulation Concerning Management and Operating Contracts

AGENCY: Office of the Secretary, DOE.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Energy Acquisition Regulation (DEAR) in order to describe the contractor employee travel expense limitations that apply to Department of Energy (DOE) management and operating (M&O) contracts as established for Federal executive agency contractors under the Federal Civilian Employee and Contractor Travel Expense Act of 1985 (Pub. L. 99-234), hereafter referred to as the "Act.".

EFFECTIVE DATE: This regulation will be effective December 5, 1986.

FOR FURTHER INFORMATION CONTACT:

Rudolph J. Schuhbauer, Business and Financial Policy Branch (MA-421.2), Procurement and Assistance Management Directorate, Washington, DC 20585, (202) 252-8173

Paul Sherry, Office of the Assistant General Counsel for Procurement and Finance (GC-34), Department of Energy, Washington, DC 20585, (202) 252-1526.

SUPPLEMENTARY INFORMATION:

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III. Public Comments.

I. Background

Under section 644 of the DOE Organization Act, Pub. L. 95-91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR Chapter 9.

Title II, Travel Expenses of Government Contractors, under section 201 of the Act, specified ". . . costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses,

shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by Subchapter I of Chapter 57 of Title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any provison of such subchapter." The referenced rates and amounts refer to the statutory provisions established in Title I, Travel Expenses of Federal Civilian Employees, of the Act, for Federal civilian employees performing official travel.

The Administrator, General Services Administration (GSA), amended the Federal Travel Regulations to implement the new statutory provisions of Title I and to specify "maximum per diem rates" applicable to Federal employees performing official travel performed on or after July 1, 1986 (51 FR 19660, 5–30–86). To implement the Act's requirements for commercial organizations receiving Federal awards, the Federal Acquisition Regulation (FAR) Council amended the FAR cost principles applicable to commercial organizations; i.e., FAR 31.205–46, Travel costs (51 FR 27488, 7–31–86).

The final rule being promulgated today by DOE applies the provisions of the Act to DOE's M&O contractors. DOE's cost principle amendment to DEAR 970.3102–17, Travel costs, states that payments for lodging, meals, and incidental expenses incurred by M&O contractor personnel while performing contract requirements shall be considered to be reasonable and allowable contract cost to the extent that they do not exceed the maximum per diem rate limitations set forth in the (1) Federal Travel Regulations, (2) Joint Travel Regulations, or (3) Standardized Regulations (Government Civilians, Foreign Areas). In special or unusual situations, actual costs in excess of the maximum per diem limits, as authorized for Federal civilian employees in the Federal Travel Regulations, may be allowed under M&O contracts. This amendment also requires that advance agreements be established regarding the M&O contractor's implementation of the Act's travel cost limitations.

The amendments to the clauses cited at DEAR 970.5204–13, Allowable costs and fixed-fee (CPFF management and operating contracts), and DEAR 970.5204–14, Allowable costs and fixed-fee (support contracts), provide that payments to M&O contractor employees for lodging, meals and incidental expenses shall be reasonable and allowable contract cost to the extent they do not exceed the rates and amounts established for Federal civilian employees.

II. Procedural Requirements

A. Review Under Executive Order 12291

The Executive order entitled, "Federal Regulations," requires that certain regulations be reviewed by the Office of Management and Budget (OMB) prior to their promulgation. OMB Bulletin 85–7 exempts all but certain types of procurement regulations from such review. This rule does not involve any of the topics requiring prior review under the bulletin and is accordingly exempt from such review.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the costs of goods or services or other direct economic factors. It will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

This rule may impose some additional recordkeeping requirements. Since the information collected moves directly from the contractor to the GSA, responsibility for recordkeeping and paperwork burden remains with GSA. DOE has requested an OMB control number from GSA.

D. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432, et seq., 1976), or the Council on Environmental Quality regulations (40 CFR Part 1020), and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Public Hearing

The Department concluded that this rule does not involve a substantial issue of fact or law and that the rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, the Department did not hold a public hearing on this rule.

III. Public Comments

This final rule implements, unchanged, the proposed provisions contained in the Notice of Proposed Rulemaking (NOPR) that DOE published in the **Federal Register** on September 11, 1986 (51 FR 32340), wherein public comments were invited for the 30-day period ending October 14, 1986. Public comments were received from two organizations and other Federal officials. The public comments and DOE's responses thereto are summarized in the paragraphs that follow:

Comment: One commenter stated that the proposed amendments do not apply to an existing M&O contract and that an existing M&O contract cannot be amended by regulation but only by mutual agreement of the contracting parties.

Response: The overall thrust of the comment concerns when the amendments being finalized by this rulemaking will be applicable to existing M&O contracts. In this regard, DOE will require that existing M&O contracts be amended as soon as practicable (e.g., when the next major contract modification is required) to incorporate the requirements of the final rule, but no later than when the contract is extended or competed in accordance with established DOE procedures.

Comment: One commenter expressed the concern that the GSA travel limitations impose a costly dual rate system; i.e., rates for lodging and rates for meals and incidental expenses.

Response: The proposed DEAR amendments provide that travel costs are not to exceed the "maximum per diem rates" applicable to Federal travelers. Use of a dual rate system is not intended for M&O contractors. However, appropriate adjustments to the daily maximum per diem rates published in the Federal Travel Regulations are required where a contractor employee is not in a travel status for a full day. Such adjustments may also be made on an overall basis provided employee travel costs reimbursed under the M&O contract do not exceed the amounts and rates applicable to Federal civilian travelers in a similar circumstance.

List of Subjects in 48 CFR Part 970

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC on November 21, 1986.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 970—MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 is revised to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

2. In subsection 970.3102–17 new paragraph (c) is added to read as follows:

970.3102–17 Travel costs.

* * * * *

(c) *Lodging, meals and incidental expenses.* (1) Costs for lodging, meals, and incidental expenses incurred by management and operating contractor personnel traveling on official business in the performance of contract work are allowable costs but subject to the limitations set forth in this subsection. Payments for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable cost to DOE.

(2) Except as provided in subparagraph (c)(3) of this subsection, management and operating contractor payments for lodging, meals, and incidental expenses (as defined in the regulations cited in (c)(2)(i) through (iii) of this subparagraph) shall be considered to be reasonable and allowable cost only to the extent that they do not exceed, on a daily basis, the maximum per diem rates in effect at the time of travel as set forth in the:

(i) Federal Travel Regulations, prescribed by the General Services Administration, for travel in the conterminous 48 United States;

(ii) Joint Travel Regulations, Volume 2, DOD Civilian Personnel, Appendix A, prescribed by the Department of Defense, for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or

(iii) Standardized Regulations (Government Civilians, Foreign Areas), section 925, "Maximum Travel Per Diem Allowances for Foreign Areas," prescribed by the Department of State, for travel in areas not covered in (c)(2)(i) and (ii) of this subparagraph.

(3) In special or unusual situations, management and operating contractor personnel may be paid for actual expenses in excess of the above-referenced maximum per diem rates provided such payments do not exceed the higher amounts authorized for Federal civilians employees as permitted in the regulations referenced in (c)(2) (i), (ii) or (iii) of this subsection and all of the following conditions are met:

(i) One of the conditions warranting approval of the actual expense method, as set forth in the regulations referenced in (c)(2)(i), (ii) or (iii) of this subsection exist.

(ii) A written justification for payment of the higher amounts is approved by an officer or appropriate official of the management and operating contractor's organization.

(iii) Documentation exists to support the payment of actual expenses incurred and each employee expenditure in excess of $25.00 is supported by a receipt. The approved justification required by (c)(3)(ii) and, if applicable, DOE advance approvals required under (c)(5) of this subsection must also be retained.

(4) Subparagraphs (c)(2) and (c)(3) of this subsection do not incorporate the regulations cited in (c)(2) (i), (ii) and (iii) in their entirety. Only the coverage in the referenced regulations dealing with special or unusual situations, the maximum per diem rates and the definitions of lodging, meals and incidental expenses are to be applied to management and operating contractors.

(5) An advance agreement with respect to compliance with subparagraphs (c)(2) and (c)(3) of this subsection will be established in the personnel appendix of the contract. The management and operating contractor shall also be required to obtain advance approval from DOE, if it becomes necessary for the contractor to exercise the authority to make payments based in the higher actual expense method repetitively or on a continuing basis in a particular area. It is not intended that individual contractor authorizations to pay actual expenses in excess of applicable maximum per diem rates be approved in advance by DOE. Such before the fact, case-by-case approvals should only be invoked when the management and operating contractor does not have acceptable travel cost policies, procedures or practices in effect.

3. In subsection 970.5204–13, the clause is amended by adding new subparagraphs (e) (33), (34) and (35) to read as follows:

970.5204–13 Allowable costs and fixed fee (CPFF management and operating contracts).

* * * * *

(e) * * *

(33)–(34) [Reserved]

(35) Contractor employee travel costs incurred for lodging, meals and incidental expenses which exceed on a daily basis the applicable maximum per diem rates in effect for Federal civilian employees at the time of travel. When the applicable maximum per diem rate is inadequate due to special or unusual situations, the contractor may pay employees for actual expenses in excess of such per diem rate limitation. To be allowable, however, such payments must be properly authorized by an officer or appropriate official of the contractor and shall not exceed the higher amounts that may be authorized for Federal civilian employees in a similar situation.

4. In subsection 970.5204–14, the clause is amended by adding new subparagraphs (e) (31), (32), and (33) to read as follows:

970.5204–14 Allowable costs and fixed fee (support contracts).

* * * * *

(e) * * *

(31)–(32) [Reserved]

(33) Contractor employee travel costs incurred for lodging, meals and incidental expenses which exceed on a daily basis the applicable maximum per diem rates in effect for Federal civilian employees at the time of travel. When the applicable maximum per diem rate is inadequate due to special or unusual situations, the contractor may pay employees for actual expenses in excess of such per diem rate limitation. To be allowable, however, such payments must be properly authorized by an officer or appropriate official of the contractor and shall not exceed the higher amounts that may be authorized for Federal civilian employees in a similar situation.

[FR Doc. 86–27400 Filed 12–4–86; 8:45 am]

BILLING CODE 6450–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1160 and 1165

[Ex Parte No. 55 (Sub-43A) and Ex Parte No. MC–142 (Sub-1)]

Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property) and Removal of Restrictions From Authorities of Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission has adopted rules (*see* appendix) governing motor property carrier applications for operating authority and restriction removal procedures (49 CFR Parts 1160 and 1165) in accordance with the

decision in *American Trucking Assn's., Inc.* v. *I.C.C.*, 770 F.2d 535 (5th Cir. 1985) (*ATA III*).

The revised rules let applicants seek any commodity authorizations that they show (through brief explanation) are not unduly restrictive. The revised rules also provide that applicants seeking to perform bulk service under specified commodities authority and carriers seeking to remove bulk operating restrictions from existing authority must establish, through OP-1 application procedures, their fitness, willingness, and ability to transport the commodities in bulk form and must provide a commensurate demonstration (a) by common carriage applicants, that the service would be responsive to a public need; or (b) by contract carriage applicants, that such service is consistent with the public interest. The proposed supplemental rulemaking instituted to consider a bulk restrictions policy for specified commodities authority [49 FR 27182 (July 2, 1984)] is discontinued elsewhere in this **Federal Register** issue.

Rules concerning the appropriate territorial scope of contract carrier permits are revised to allow, at a minimum, 48-State operating territories. Contract carrier applicants seeking to provide service in Alaska or Hawaii are required to introduce evidence demonstrating their fitness, willingness, and ability to operate in those States and establishing that the service is consistent with the public interest.

EFFECTIVE DATE: The rules will be effective on January 5, 1987.

FOR FURTHER INFORMATION CONTACT:
Suzanne Higgins, (202) 275-7181,
or
Louis E. Gitomer, (202) 275-7691.

SUPPLEMENTARY INFORMATION: The Commission's decision contains additional information. To purchase a copy of the decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357 in the DC Metropolitan area or (800) 424-5403, toll-free, outside the DC area.

Energy and Environmental Considerations

This action will not affect significantly either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

The Commission certifies that the adopted rules will not have a significant economic impact on a substantial number of small entities.

The information required of small carrier applicants seeking either authority to provide bulk service or authority to provide contract service in Alaska or Hawaii should be available from business records or can be developed readily without affecting the costs of doing business. The adopted rules should not result in additional reporting, recordkeeping, or compliance requirements for small entities.

List of Subjects in 49 CFR 1160 and 1165

Administrative practice and procedure, Brokers, Motor carriers.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons dissented in part with a separate expression.

Noreta R. McGee,
Secretary.

Appendix

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1160—HOW TO APPLY FOR OPERATING AUTHORITY

1. The authority citation for Part 1160 continues to read as follows:

Authority: 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, and 11102; 5 U.S.C. 553 and 559.

2. Section 1160.101 is revised to read as follows:

§ 1160.101 Commodity description.

(a) *General commodities carriers.* Authority to transport general commodities will be restricted against the transportation of classes A and B explosives, commodities in bulk, and household goods, unless the applicant specifically demonstrates (1) its fitness, willingness, and ability to perform such specialized service(s) and (2) that the specialized service(s) would, (i) in the case of common carrier authority, be responsive to a public demand or need, or (ii) in the case of contract carrier authority, be consistent with the public interest. Other restrictions on general commodities authority are considered unduly restrictive and will not normally be imposed.

(b) *Named commodities or limited classes of commodities.*

(1) Authority to transport a named commodity or limited class of commodities normally shall not contain any commodity or service restrictions. However, commodity descriptions will be restricted against transportation of commodities in bulk unless the applicant specifically demonstrates (i) its fitness, willingness, and ability to perform such operations, and (ii) that the bulk service would be, (A) in the case of common carrier authority, responsive to a public demand or need, or (B) in the case of contract carrier authority, consistent with the public interest.

(2) An applicant seeking authority to transport named commodities or limited classes of commodities shall frame its request using:

(i) The two-digit Standard Transportation Commodity Code on file with the Commission; or

(ii) One or more of the broad generic groupings contained in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 (1952) and 766 (1953); or

(iii) A broad class description generally accepted by the Commission, such as commodities in bulk, commodities which because of their size and weight require special equipment, oil field commodities as described in *Mercer Extension-Oil Field Commodities*, 74 M.C.C. 459 (1946), or commodities dealt in by a particular business; or

(iv) Any other commodity description that the applicant shows (through brief explanation) is not unduly restrictive.

3. Section 1160.105 is revised to read as follows:

§ 1160.105 Contract carriers.

Permits to operate as a contract carrier to serve named shippers or classes of shippers (industry or industries) shall authorize, at a minimum, service "between points in the United States (except Alaska and Hawaii)." A contract carrier will not be authorized to provide service in Alaska or Hawaii unless it demonstrates: (a) its fitness, willingness, and ability to serve the State(s); and (b) that service in the State(s) is consistent with the public interest.

PART 1165—REMOVAL OF RESTRICTIONS FROM AUTHORITIES OF MOTOR CARRIERS OF PROPERTY, MOTOR CARRIERS OF PASSENGERS AND FREIGHT FORWARDERS

4. The authority citation for Part 1165 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10922 (h)(1); 5 U.S.C. 553.

5. Paragraph (b)(4) of § 1165.21 is revised and a new paragraph (d) is added to read as follows:

§ 1165.21 Commodity description.

* * * * *

(b) * * *

(4) To replace such an authorization with any other commodity description

that the applicant shows (through brief explanation) is not unduly restrictive.

* * * * *

(d) *Bulk service restrictions.* A carrier seeking to remove bulk service restrictions from either general or specified commodities authority must make a specific showing (1) of its fitness, willingness, and ability to transport the involved commodities in bulk form, and (2) that the bulk service is (i) responsive to a public demand or need, where common carrier authority is involved, or (ii) consistent with the public interest, where contract carrier authority is involved. Because such specific inquiries exceed the scope of restriction removal procedures, requests to eliminate bulk restrictions should be made by filing an operating rights application for bulk authority under the rules at 49 CFR Part 1160, using Form OP–1.

6. Section 1165.26 is revised to read as follows:

§ 1165.26 Contract carriers.

(a) Where a permit of a contract carrier limits the carrier's territorial scope of service for a named shipper, shippers, or class(es) of shippers to less than the 48 contiguous United States, such authority is considered unduly restrictive. Use of these procedures normally is appropriate for applications seeking to broaden the territorial scope of such permits. Such applications can request authority to serve the named shipper, shippers or class(es) of shippers, "between points in the United States (except Alaska and Hawaii)."

(b) Contract carriers seeking to broaden the territorial scope of their operations to include Alaska or Hawaii will be required to demonstrate: (1) Their fitness, willingness, and ability to serve the State(s) and (2) that service in the State(s) is consistent with the public interest. Because such specific inquiries exceed the scope of restriction removal procedures, requests to expand contract carrier authority to permit service to Alaska and/or Hawaii should be made by filing an operating rights application under the rules at 49 CFR Part 1160, using Form OP–1.

(c) The commodity descriptions in contract carrier permits can be broadened, and unreasonable restrictions removed, to the extent specified in Subpart C of this part.

[FR Doc. 86–27381 Filed 12–4–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 372

[Docket No. 60976–6215]

Pacific Salmon Treaty: Rescission of Preemption

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; notice of withdrawal.

SUMMARY: The Administrator of NOAA issues a notice withdrawing an emergency interim rule which closed Puget Sound salmon management and catch reporting areas 7 and 7A to commercial salmon fishing with net gear for the remainder of 1986. This action is taken because the reasons for the rule no longer exist. The intended effect of the action is to return salmon fishery management in these areas to the Washington Department of Fisheries and the treaty Indian tribal authorities.

EFFECTIVE DATE: December 2, 1986.

ADDRESS: Send comments to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206–526–6150.

SUPPLEMENTARY INFORMATION: Section 6 of the Pacific Salmon Treaty Act, 16 U.S.C. 3635, authorizes the Secretary of Commerce (Secretary) to supersede any treaty Indian tribal regulation determined by the Secretary to place the United States in jeopardy of not fulfilling its international obligations under the Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, signed at Ottawa, January 28, 1986 (Treaty).

An emergency interim rule (51 FR 33761, September 23, 1986) was promulgated under the authority of the Treaty which closed Puget Sound salmon management and catch reporting areas 7 and 7A to commercial salmon fishing with net gear for the remainder of 1986, except as otherwise authorized by the Pacific Salmon Commission. The action preempted a regulation of the Lummi Indian Tribe which would have opened an unauthorized coho fishery and placed the United States in jeopardy of not fulfilling its international obligations under the Pacific Salmon Treaty.

The preemption regulation and associated prohibition of net fishing in specified areas of the Puget Sound is no longer necessary, as the coho stocks of concern are no longer in the area.

Therefore, for the reason cited above, the Administrator of NOAA, in consultation with the U.S. Departments of State, Interior, and Transportation and the Pacific Fishery Management Council, promulgates this notice to withdraw the emergency interim rule referenced above.

Classification

Domestic management of coho salmon stocks of Canadian origin (Fraser River) is regulated by the State of Washington and by treaty Indian tribal authorities in areas 7 and 7A and in the Straits of Juan de Fuca. The United States provides oversight to ensure compliance with management objectives presently agreed between the United States and Canada. This foreign affairs function of the United States was exercised in promulgating the emergency interim rule this notice withdraws.

Rescission of the emergency rule is necessary and appropriate to carryout obligations of the United States under the Pacific Salmon Treaty, and return salmon management to State and Tribal authorities in these areas. This action involves a foreign affairs function, and, as is expressly provided in 16 U.S.C. 3636 (a), is not subject to sections 4 through 8 of the Administrative Procedure Act (5 U.S.C. 553–557), or the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). The rule is consistent with the Treaty, the Pacific Salmon Treaty Act (16 U.S.C. 3631–3644), and other applicable law, including U.S. obligations to Canada and to U.S. treaty Indians. State and tribal fishery managers are being notified of this action.

Because this rule involves a foreign affairs function, it is exempt from review by the Office of Management and Budget under E.O. 12291. This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comments.

This rule does not contain any collection of information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 372

Fisheries, Fishing.

PART 372—[REMOVED]

For the reasons set out in the preamble, 50 CFR Part 372 is removed without revision.

Dated: December 2, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resources Management, National Marine Fisheries Service.

[FR Doc. 86-27342 Filed 12-2-86; 2:25 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 234
Friday, December 5, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-39]

Withdrawal of Petition for Rulemaking by Southern California Edison Co.

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; withdrawal.

SUMMARY: The Commission is withdrawing, at the petitioner's request, a petition for rulemaking that was filed by the Southern California Edison Company. In the petition, dated March 29, 1985, Southern California Edison requested that the Commission amend its emergency planning regulations in 10 CFR Part 50 to clarify that onsite and offsite emergency response plans need only include medical arrangements for persons who are both contaminated with radioactive material and physically injured in some other manner which requires emergency medical treatment.

DATE: The petition is withdrawn as of December 5, 1986.

ADDRESSES: Copies of the petitioner's letters of request and withdrawal are available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of these letters may be obtained by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, telephone (301) 443-7657.

SUPPLEMENTARY INFORMATION:

In a **Federal Register** notice published on May 20, 1985 (50 FR 20799), the Commission announced the receipt of and requested comments on a petition for rulemaking (PRM-50-39) filed by Southern California Edison Company. The petitioner requested that the Commission amend its emergency planning regulations to clarify that onsite and offsite emergency response plans need only include medical arrangements for persons who are both contaminated with radioactive material and physically injured in some other manner which required emergency medical treatment. The petitioner stated that the Court of Appeals decision in *Guard* v. *Nuclear Regulatory Commission*, 753 F.2d 1144, 1150, (D.C. Cir. 1985) had left undecided the planning standard to be applied pursuant to 10 CFR 50.47(b)(12). Particularly, the class of people for whom advance arrangements for medical services are required is not clearly stated in the present wording of 10 CFR 50.47(b)(12).

By letter dated October 21, 1986, the petitioner has withdrawn its petition for rulemaking. The petitioner offers that the Statement of Policy on Emergency Planning Standard 10 CFR 50.47(b)(12) issued by the Commission on September 17, 1986 (51 FR 32904) sets forth the Commission's revised position on medical arrangements in the event of an accident resulting in an offiste radiation emergency. The petitioner is satisfied that the Commission has directed its Staff to develop specific guidelines with respect to the extent of medical arrangements necessary and has set timeframes within which the guidelines should be developed.

The petitioner has reviewed the Commission's policy directive and concludes that the action directed therein render moot the Company's Petition for Rulemaking and views it as no longer being necessary.

Dated in Washington, DC this 1st day of December, 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-27401 Filed 12-4-86; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWA-40]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of proposed rulemaking

SUMMARY: This action corrects the date of the informal airspace meeting for the Shreveport Regional Airport, LA, and the Barksdale AFB, LA, Airport Radar Service Areas as published in the **Federal Register** on October 1, 1986 (51 FR 35140) and corrected on November 10, 1986 (51 FR 40812).

DATE: Informal Airspace Meeting will be held January 13, 1987, at 7:00 p.m.

ADDRESSES: Informal Airspace Meeting will be held at: Chez Vous Motor Inn (formerly Quality Inn), 5215 Monkhouse Drive, Shreveport, LA.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Issued in Washington, DC, on November 28, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Divison.

[FR Doc. 86-27309 Filed 12-4-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 60971-6171]

Request for Comments on Annual Review of the Control List

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Export Administration Amendments Act of 1985 (Pub. L. 99-64 of July 12, 1985) amended the Export Administration Act of 1979 (the Act) by revising section 5(c)(3), "Control List." Section 5(c)(3), as revised, states that the Secretary shall review the list of items controlled for national security reasons ("Control List") at least once each year and shall promptly make such revisions of the List as may be necessary after each such review.

Consistent with the Act and the U.S. Department of Commerce's commitment to eliminate export controls that are not necessary to protect national security interests, the Department is soliciting comments on this review from government agencies and interested parties, including comments on the availability of specific items from foreign sources.

The Department is particularly interested in the specific subject areas identified under **SUPPLEMENTARY INFORMATION.**

If the Department concludes after its review of the comments that the Control List should be modified, it will initiate appropriate rulemaking action with an explanation of the reasons for the revisions.

DATE: Comments should be received by February 3, 1987.

ADDRESS: Comments (six copies) should be addressed to: Margaret Cornejo, Department of Commerce, Trade Administration, Export Administration, Office of Technology and Policy Analysis, Room 4073, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Henry Mitman, Capital Goods Technology Center, (202) 377-5695; Rajendra Dheer, Computer Systems Technology Center, (202) 377-0706; Randolph Williams, Electronic Components and Instrumentation Technology Center, (202) 377-3109; or, Monty Baltas, Telecommunications Technology Center, (202) 377-0730, Export Administration, Department of Commerce, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The Department is particularly interested in the specific subject areas identified below by the following Export Control Commodity Numbers (ECCN):

1001—Metalworking Technology
1075—Spin/Flow-Forming Machines
1080—Gas Turbine Blade/Vane-Making Equipment
1081—Machinery For Aircraft Manufacture
1086—Machines For Manufacture of Jet-Gas Turbine Engines
1088—Gear Making/Finishing Machines
1091—Numerical Control Equipment
1093—Numerically Controlled Machines, Components/Parts
1206—Electric Arc Devices
1301—Superalloy Production Equipment Technology
1301—Equipment For Production of Superalloys
1312—Presses and Specialized Controls Accessories
1353—Machinery For Making Communication Cable
1357—Machinery Filament-Winding/Tape-Laying
1359—Tooling & Fixtures For Manufacture of Fiber Optic Connectors
1370—Machines For Turning Optical-Quality Surfaces
1371—Anti-Friction Bearings
1518—Telemetering and Telecontrol Equipment
1519—Transmission Equipment, Single/Multi-Channel
1526—Cable, Communication/Other Coaxial
1567—Switching
1568—Electric/Electronic Equipment
1601—Spherical Powder Manufacturing Technology
1603—Pressure Pipes
1635—Iron/Steel, Molybdenum Alloys
1672—Aluminides
1674—Vanadium
1763—Fibrous/Filamentary Materials
1767—Preforms for Fabrication of Optical Transmission Fibers

The above items are within the purview of the Capital Goods Technology Center with the exception of 1353, 1359, 1518, 1519, 1526, 1567 and 1767, which are the responsibility of the Telecommunications Technology Center. Export Control Commodity Number 1568 is the joint responsibility of the Capital Goods Technology Center and the Electronic Components Instrumentation Technology Center.

Commodities controlled for reasons of national security are identified on the Control List (Supp. 1 to § 399.1 of the Export Administration Regulations), which is maintained by Export Administration in the Department of Commerce. Technical Data controlled for national security reasons is identified in Part 379 of the Regulations.

Comments Invited

Interested persons are invited to submit written views, data, and arguments to the U.S. Department of Commerce to assist in its annual review of the Control List. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. No oral presentation of comments is contemplated at this time. However, commenters should identify persons who can be contacted to provide any clarification or expansion of particular comments.

The period for submission of comments will close (60 days after publication). The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured.

Public comments on these regulations will be a matter of public record and will be available for public inspection and copying except those comments that are accorded confidential treatment, as described below. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The Department will accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted to Export Administration (EA) on sheets of paper separate from any non-confidential information submitted. The top of each page should be marked with the term **"CONFIDENTIAL INFORMATION"**. Export Administration will either accept the submission in confidence or, if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany each submission of confidential information. The summary will be made available for public inspection.

Information accepted by EA as privileged under subsections (b)(3) or (4) of the Freedom of Information Act (5 U.S.C., 552(b) (3) and (4)) will be kept confidential and will not be available for public inspection, except according to law.

The public record concerning these regulations will be maintained in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4104, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq;* E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986).

Dated: December 1, 1986.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86–27248 Filed 12–4–86; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 852 3029]

J.C. Penney Co., Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a New York City-based retailer from bringing any debt-collection cases in judicial districts other than those in which a customer lives or signed the disputed sales contract. Further, respondent would be required to either transfer to a closer court, or dismiss entirely, all pending cases brought in "distant forums."

DATE: Comments will be received until February 3, 1987.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/I–500, Rachelle V. Browne, Washington, DC 20580. (202) 724–1568.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Debt collection, Retailers, Trade practices.

In the matter of J.C. Penney Company, Inc., a corporation; File No. 852 3029 Agreement Containing Consent Order To Cease and Desist.

The Federal Trade Commission having initiated an investigation of certain acts and practices of J.C. Penney Company, Inc., a corporation, and it now appearing that J.C. Penney Company, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between J.C. Penney Company, Inc., by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. J.C. Penney Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 1301 Avenue of the Americas, in the City of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the proposed respondent, and the proceeding is in the public interest.

3. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to settle or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim it may have under the Equal Access to Justice Act, 5 U.S.C. 504 *et seq.*

5. This agreement shall not become part of the public record of the proceedings unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of the complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed

respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent J.C. Penney Company, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the collection, or attempted collection, of any consumer credit account, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from bringing or authorizing the bringing of, or proceeding with or authorizing the proceeding with, any action to recover any allegedly delinquent consumer credit account (other than an action to enforce an interest in real property) in any judicial district or similar legal entity that is not the one in which the consumer resides at the commencement of the action or the one in which the consumer signed the contract sued upon (hereinafter "distant forum suit"); provided, however, that this paragraph shall not preempt any rule of law that further limits choice of forum or that requires, in actions involving real property or fixtures attached to real property, that suit be brought in a particular county, judicial district, or similar legal entity. For purposes of this order, in open end credit transactions (for example, "revolving charge accounts"), the "contract sued upon" is either the account agreement or the document (commonly called "sales slip" or "purchase order") evidencing the actual credit sale.

II

It is further ordered that within thirty (30) days of the date of service of this order, respondent shall terminate or cause to be terminated any distant forum suit which is pending on the date of service of this order; provided, however, that, respondent may terminate or cause to be terminated such suit by having the complaint either dismissed or transferred to a judicial district or similar legal entity in which the consumer resides or signed the contract sued upon, but in the latter instance only if respondent gives the defendant a clear written notice of such action, in substantially the same form as set forth in Appendix A of this order, and the opportunity to defend equivalent to that which defendant would receive if a new suit were being brought.

III

It is further ordered that whenever a suit is dismissed pursuant to Paragraph II respondent shall give, within thirty days thereafter, in substantially the same form as set forth in Appendix B, clear, written notice of such dismissal to the defendant to such suit, to each "consumer reporting agency," as that term is defined in the Fair Credit Reporting Act (U.S.C. 1681a), that respondent knows or has reason to know has recorded the suit in its files, and to any other person or organization whom the consumer defendant has requested be given it.

IV

It is further ordered that respondent shall not be deemed to have violated this order for failure to comply with Paragraph I when such failure directly concerns:

1. A distant forum suit brought on behalf of respondent and reduced to judgment prior to the date of service of this order;

2. A distant forum suit brought in the judicial district or similar legal entity appearing from respondent's business records to be defendant's last known address unless respondent otherwise knows of a more current address;

3. A distant forum suit brought in the name of a third party to recover on a consumer credit account originated by respondent but legally assigned to the third party and with respect to which respondent, prior to the bringing of the distant forum suit, has relinquished, in fact, any and all actual or beneficial ownership and control; or

4. A distant forum suit brought in the name of a third party to recover on a consumer credit account originated by a third party but referred to respondent, prior to default, for collection, provided that the third party, in fact, retains all actual and beneficial ownership and control of the account and of the bringing of the suit.

V

It is further ordered that respondent shall maintain and upon request make available to the Federal Trade Commission:

1. Up-to-date documentation of all suits brought during the two (2) year period immediately following the date of service of this order in connection with the collection of any consumer credit account, which documentation shall contain: (a) the name of each defendant; (b) the defendant's address; (c) the judicial district(s) or similar legal entity where the defendant resides and, if relied upon for purposes of suit, the judicial district or similar legal entity where the contract, if any, was signed; (d) the judicial district or similar legal entity where suit was filed; (e) the date filed; (f) the docket number; (g) name of plaintiff (if a collection agency or other entity suing on behalf of respondent); (h) amount claimed; (i) disposition; and (j) an explanation for the choice of forum if the suit was brought in a judicial district other than where the defendant resides or signed the contract sued upon; and

2. A written summary of suits brought in the Commonwealth of Virginia by respondent's collection counsel for the one (1) year period immediately prior to the date of service of this order, with information limited to items (a), (c), (d), and (g) in subparagraph 1 above, and a notation of whether any such suit was terminated pursuant to Paragraph II.

VI

It is further ordered that respondent shall distribute a copy of this order to each of its subsidiaries and operating divisions dealing with consumer credit, to each collection agency or counsel with whom respondent currently places its retail credit accounts for collection, and to any other collection agency or counsel prior to referral of respondent's retail credit accounts for collection and shall secure from each such collection agency or counsel a signed and dated statement acknowledging receipt of the order and willingness to comply with it.

VII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a

successor corporation, or any other change in the corporation, including the creation or dissolution of subsidiaries, which may affect compliance obligations arising out of the order.

VIII

It is further ordered that respondent shall maintain and upon request make available to the Federal Trade Commission all records that will demonstrate compliance with the requirements of this order including, but not limited to, copies of any notices provided to consumers pursuant to any provision of this order and copies of all statements secured from respondent's collection agencies or counsel acknowledging receipt of this order.

IX

It is further ordered that respondent shall, within sixty (60) days after the date of service of this order, file with the Commission a report, in writing, signed by the respondent and setting forth in detail the manner and form of its compliance with this order.

Appendix A

Consumer's Name and address or, if applicable, Consumer's Attorney's Name and Address

RE: [Case Name and Docket No.]

Dear [Addressee]: On [ ], J.C. Penney Company, Inc., through its attorney, [attorney's name], filed suit against ["you" or, if applicable "your client, consumer's name"]. The suit was brought in [name of court], [name of county, judicial district or similar legal entity, whichever applicable].

J.C. Penney, Inc., has agreed with the Federal Trade Commission to abide by the Commission's "fair venue standard." That standard provides that if a creditor sues a consumer for a delinquent account, the creditor may sue the consumer only in the judicial district in which the consumer resides at the beginning of the action or signed the contract sued upon.

J.C. Penney, Inc., has also agreed to dismiss or transfer any suit pending on [date of service of order] that was not brought in the proper judicial district under the Commission's standard.

Our records show, that under our agreement with the Federal Trade Commission, we should have brought suit against you [or your client] in [name of applicable county or judicial district] and not in [name of "distant forum"]. For this reason, we are seeking the court's permission to transfer the suit to [name of county or judicial district].

You should receive, from our attorney or the court, copies of all legal papers relating to our request to transfer this suit.

Sincerely,

[J.C. Penney Company, Inc., Signatory]

Appendix B

[Addressee's Name and Address]

RE: [Case Name and Docket No.]

Dear [Addressee]: On [ ], J.C. Penney Company, Inc., caused its suit against [consumer's name] to be dismissed.

Please modify your records to reflect this additional information.

[If applicable: (S)uch suit was refiled on (*date*) at (*place suit filed*).]

Sincerely,

[J.C. Penney Company, Inc., Signatory]

cc: [Consumer's Name and Address]

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from J.C. Penney Company, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed complaint alleges that respondent violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by suing consumers in Virginia in judicial districts other than where the consumers resided or signed the contracts sued upon.

The proposed order prohibits respondent from bringing or proceeding with any collection action in any judicial district that is not the one in which the consumer resides at the commencement of the action or signed the contract sued upon.

The proposed order also requires respondent to:

- Dismiss or transfer all suits that were brought in judicial districts other than where consumers resided or signed the contract sued upon and that are pending on the date the proposed order is served.
- Send notices concerning the transfers of those suits to each affected consumer.
- Send notices concerning the dismissals of those suits to each affected consumer, to each credit reporting agency recording the suit in its files and, upon a consumer's request, to any other person or organization.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 86-27325 Filed 12-4-86; 8:45 am]

BILLING CODE 6750-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Privacy Act; Exempt System of Records

AGENCY: Tennessee Valley Authority.

ACTION: Proposed rule.

SUMMARY: The Tennessee Valley Authority (TVA) proposes to exempt a new system of records maintained by the Office of the Inspector General for investigations and entitled "OIG Investigative Records—TVA" from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of section 3 of the Privacy Act, prsuant to 5 U.S.C. 552a(k)(2). These exemptions are required because application of those sections could alert investigation subjects to the existence or scope of investigations, disclose investigative techniques or procedures, reduce the cooperativeness of witnesses, or otherwise impair investigations.

DATES: Comments on the proposed exemption should be received in writing on or before January 5, 1987.

ADDRESSES: Send comments to Privacy Act Coordinator, Division of Personnel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Thomas E. Cressler II, Division of Personnel, Tennessee Valley Authority, Knoxville, Tennessee 37902, (615) 632-2170.

SUPPLEMENTARY INFORMATION: A description of the new system is published in the Notice Section of today's **Federal Register.** Since this rule relates to individuals rather than small entities, it will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601).

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of Information, Privacy, and Sunshine Acts.

It is proposed that 18 CFR be amended as set forth below.

Dated: November 28, 1986.

W. F. Willis,

General Manager.

PART 1301—[AMENDED]

1. The authority for Part 1301, Subpart B, continues to read as follows:

Authority: Sec. 3, Pub. L. 93-579, 88 Stat. 1897 (5 U.S.C. 552a).

2. It is proposed to amend § 1301.24 by adding paragraph (d) to read as follows:

§ 1301.24 Specific exemptions.

* * * * *

(d) The TVA system OIG Investigative Records is exempt from subsections (c)(3); (d); (e)(1), (4)(G), (4)(H), (4)(I); and (f) of section 3 of the Act and corresponding sections of these rules pursuant to section 3(k)(2) of the Act (5 U.S.C. 552a (k)(2)). This system is exempted because application of these provisions might alert investigation subjects to the existence or scope of investigations, disclose investigative techniques or procedures, reduce the cooperativeness of witnesses, or otherwise impair investigations.

[FR Doc. 86-27221 Filed 12-4-86; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 700

[Docket No. 85N-0536]

Cosmetics; Proposed Ban on the Use of Methylene Chloride as an Ingredient of Cosmetic Products; Reopening of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for 30 days on its proposal to ban the use of methylene chloride in cosmetic products to provide an opportunity for interested parties to submit comments on four new studies, which were recently submitted to FDA, concerning comparative pharmacokinetics, metabolism, and genotoxicity of methylene chloride.

DATE: Comments by January 5, 1987.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Terry C. Troxell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0180.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 18, 1985 (50 FR 51551), FDA issued a proposed rule that would ban the use of methylene chloride as an ingredient of cosmetic products. The agency proposed this action because scientific studies demonstrated that inhalation of methylene chloride causes cancer in laboratory animals. The agency's risk assessment, based on studies in mice, indicated that continued use of methylene chloride in cosmetic products may pose a significant risk to the public health, especially to specific segments of the population that are continually exposed to cosmetics containing methylene chloride.

In the preamble to the proposal to ban the use of methylene chloride in cosmetics, FDA announced its assessment of the safety of methylene chloride for its food additive use in decaffeinating coffee beans. Based on its assessment, the agency did not propose to lower the maximum permitted residue level of methylene chloride in decaffeinated coffee because that level is considered safe. As a result of requests for additional time to prepare comments on the use of methylene chloride for decaffeination, the agency extended the comment period for 45 days for all interested persons to submit comments regarding the agency's assessment of the safety of methylene chloride for its food additive use as a decaffeinating agent (February 24, 1986; 51 FR 6494).

On October 10, 1986, the agency received four new toxicology studies on methylene chloride that were sponsored by the European Council of Chemical Manufacturers' Federation (CEFIC). The four studies are entitled: (1) Methylene Chloride: In Vivo Inhalation Pharmacokinetics and Metabolism in F344 Rats and $B_6C_3F_1$ mice; (2) Methylene Chloride: In Vitro Metabolism in Rat, Mouse, Hamster Liver and Lung Fractions, and in Human Liver Fractions; (3) Methylene Chloride: Induction of S-Phase Hepatocytes in the Mouse after in Vivo Exposure; and (4) Methylene Chloride: An Evaluation in the Mouse Micronucleus Test.

The sponsor of these studies contends that the agency should revise its assessment of the safety of using methylene chloride as an ingredient in cosmetics and as a decaffeinating agent for coffee based on results of these studies. Because these new studies were submitted to the agency well after the close of the comment period, other interested persons have not had an opportunity to present their views on these data. Therefore, the agency is reopening the comment period for 30 days to permit interested persons to submit comments on these four toxicology studies and their relevance to the safety assessment of methylene chloride and on any other relevant new toxicology data.

Interested persons may obtain single copies of these studies from the Dockets Management Branch (address above) by requesting CEFIC submission dated October 3, 1986, report number 3, filed under the docket number found in brackets in the heading of this document.

Interested persons may, on or before January 5, 1987, submit to the Dockets Management Branch (address above) written comments regarding the four cited toxicology studies on methylene chloride. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 28, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-27321 Filed 12-4-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 118

Judgment Funds, Shoshone Tribe of the Wind River Reservation, WY

October 15, 1986.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule; removal.

SUMMARY: The judgment funds for the Shoshone Tribe of the Wind River Reservation, Wyoming have been depleted through payment to tribal members. Since there are no funds left to be distributed, there is no further need for this rule. Part 118 is removed in its entirety. This removal will not have an adverse effect on any ongoing program.

DATE: Comments must be received by February 3, 1987.

ADDRESS: Comments should be sent to Woodrow W. Hopper, Jr., Chief, Division of Management Research and Evaluation, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., Washington, DC 20245, telephone number (202) 343-1942.

FOR FURTHER INFORMATION CONTACT: Woodrow W. Hopper, Jr. at (202) 343-1942 (FTS 343-1942).

SUPPLEMENTARY INFORMATION: The Act of June 25, 1938, provided for an appropriation for payment of judgment

funds to members of the Shoshone Tribe of the Wind River Reservation in Wyoming who were living on July 27, 1939. A roll prepared listing these members was the basis for the distribution of the judgment fund. Bureau of Indian Affairs' records indicate that the judgment funds for the Shoshone Tribe of the Wind River Reservation in Wyoming have been depleted. Since there are no funds left to distribute, removal of this part is necessary because Part 118 has become obsolete.

List of Subjects in 25 CFR Part 118

Indians-claims, Indians-judgment funds.

PART 118—[REMOVED]

Accordingly, for the reasons set out above, 25 CFR Part 118 is proposed to be removed and reserved.

Ronald L. Esquerra,

Deputy to the Assistant Secretary—Indian Affairs (Operations).

[FR Doc. 86-27312 Filed 12-4-86; 8:45 am]

BILLING CODE 4310-02-M

POSTAL SERVICE

39 CFR Part 111

Identification of Bulk Third-Class Mail Bearing References to Expedited Handling or Delivery

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposal is to deal with disruptions in postal operations caused primarily by some third-class bulk mail bearing unauthorized or misleading references to expedited handling or delivery, or special services. These references cause postal employees to spend extra time examining this mail to determine its proper disposition. The proposed change to postal regulations is expected to assist postal employees to make this examination more expeditiously and with less operational disruption.

DATE: Comments must be received on or before January 4, 1987.

ADDRESS: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, Room 8430, 475 L'Enfant Plaza, West SW., Washington, DC 20260-5360. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Edmund J. Wronski, (202) 268-5320.

SUPPLEMENTARY INFORMATION: There are a growing number of reports from post offices that postal operations have been disrupted by envelopes which bear unauthorized or misleading references to expedited handling or delivery, or special services. These envelopes are primarily sent as third-class mail. Such envelopes frequently are designed to look like waybills, airbills, invoices, or containers used by private courier services. They are also characterized by the use of words and markings such as RUSH, DO NOT DELAY, PRIORITY, URGENT, EXPRESS, OVERNIGHT, EXPEDITE, et cetera.

At manual distribution and delivery units, this type of mail may cause employees to stop their routine duties in order to more closely examine the piece. Often other postal employees are interrupted from their duties and are asked to inspect the mail. When employees remain uncertain about how to handle the piece, or pieces, the mail will be referred to a supervisor for a proper determination. If one cannot immediately be made, the mail will be referred to mailing requirements offices, Rates and Classification Centers, or the Office of Classification and Rates Administration for a ruling. Mail of this type may be erroneously referred to the Computerized Forwarding System, and some of the mail is even inappropriately forwarded.

Since the Postal Service is a labor intensive organization, such disruptions nationwide add to postal costs. Such additional costs must be unfairly absorbed by individuals and other mail users including those who send First-Class Mail and other third-class mailers who do not use envelopes of this type in their own mailing campaigns.

Before this **Federal Register** notice, the Postal Service planned to introduce more stringent requirements on mail bearing expedited references. After meeting with representatives from the mailing industry, it was decided that the rule printed below be proposed and that an informational program be disseminated to postal employees on the proper handling of this type of mail. As a result of these measures, the Postal Service anticipates a reduction in the type of problem described, thus making additional requirements unnecessary.

Therefore, in order to help postal employees make a quick determination of the class of mail and the postage rate which has been paid, the Postal Service proposes to amend its regulations pertaining to the preparation of permit imprints. The proposed regulation will be applicable only to bulk third-class mail bearing references to expedited handling or delivery. By calling attention to the class of mail, we anticipate that the permit imprints on such mail will make it less likely that the mail will be mishandled.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b),(c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendment of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

2. In 145.3, insert ".31 General" preceding the text and add new .32 reading as follows:

145.3 Preparation of permit imprints.

* * * * *

.32 Bulk Third-Class Mail Bearing References to Expedited Handling or Delivery

With the exception of post card size mail and imprints placed on address labels, permit imprints on bulk third-class mail bearing references to expedited handling or delivery (such as PRIORITY, EXPRESS, OVERNIGHT, et cetera), must be prepared as follows:

a. Mailers must show the words "Bulk Rate" or "Non Profit Org." in boldface print or in letters that are larger than any others used in the permit imprint.

b. Mailers must leave a clear space of not less than 3/8 of an inch around the entire permit imprint.

An appropirate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Paul J. Kemp,

Supervisory Attorney, Legislative Division.

[FR Doc. 86-27307 Filed 12-4-86; 8:45 am]

BILLING CODE 7710-12-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1160 and 1165

[Ex Parte No. 55 (Sub-43A) and Ex Parte No. MC-142 (Sub-1)]

Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property); Removal of Restrictions From Authorities of Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Discontinuance of proposed supplemental rulemaking.

SUMMARY: The Commission is discontinuing the supplemental rulemaking to consider a bulk restrictions policy for specified commodities authority [49 FR 27182 July 2, 1984]. This action is consistent with the Commission's adoption of rules governing bulk service restrictions and other licensing and restriction removal matters in accordance with the decision in *American Trucking Ass'ns., Inc.* v. *I.C.C.*, 770 F.2d 535 (5th Cir. 1985) [*ATA III*], announced in a Final Rule published concurrently with this notice.

EFFECTIVE DATE: December 5, 1986.

FOR FURTHER INFORMATION CONTACT:

Suzanne Higgins, (202) 275–7181

or

Louis E. Gitomer, (202) 275–7292.

SUPPLEMENTARY INFORMATION: The Commission's decision adopting final licensing and restriction removal rules in these proceedings to conform with the *ATA III* decision contains additional information. To purchase a copy of the decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357 in the DC Metropolitan area or (800) 424–5403, toll-free, outside the DC area.

Energy and Environmental Considerations

This action will not affect significantly either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Parts 1160 and 1165

Administrative practice and procedure, Brokers, Motor carriers.

Authority: 5 U.S.C. 553 and 49 U.S.C. 10101, 10321, 10922, 10923, 10924, and 11102.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 86–27380 Filed 12–4–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 60979–6179]

Snapper–Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Fishery Management Plan for the Snapper–Grouper Fishery of the South Atlantic (FMP) contains a management measure that provides for designating modified habitats or artificial reefs as special management zones (SMZs). This proposed regulatory amendment would (1) designate specific artificial reefs off the coasts of South Carolina and Georgia as SMZs; (2) restrict fishing gear in these areas to the use of hand-held hook-and-line gear (including manual, electric, or hydraulic rod and reel) and spearfishing (including powerheads except for the taking of jewfish); and (3) prohibit the taking of jewfish within these areas. The intended effect is to establish the designated artificial reefs (ARs) as SMZs and to manage them to promote orderly use of the resource, to reduce user group conflicts, and to maintain the intended socioeconomic benefits of the ARs to the maximum extent practicable.

DATES: Comments on the proposed rule must be received on or before January 5, 1987.

ADDRESSES: Comments on the proposed rule and requests for copies of the supplemental regulatory impact review/regulatory flexibility analysis and supplemental environmental impact statement should be sent to Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813–893–3722.

SUPPLEMENTARY INFORMATION: The South Carolina Wildlife and Marine Resources Department and the Georgia Department of Natural Resources, under management measure 17 of the FMP, have requested that the South Atlantic Fishery Management Council (Council) establish SMZs around 12 and 8 ARs respectively, located in the fishery conservation zone (FCZ) off their coasts. The ARs were constructed at considerable expense by South Carolina and Georgia, primarily to promote recreational fishing and diving opportunities that otherwise would not have existed over the generally featureless sand shelf that dominates the area.

The primary target species for recreational fishermen fishing the ARs is the black sea bass (*Centropristis striata*). Because this species is highly gregarious, it is particularly vulnerable to exploitation by fish traps and other efficient gear types. Even limited use of such gear can jeopardize the intended primary uses of the ARs and their associated benefits. By designating an AR and its surrounding area as an SMZ, the use of specific types of fishing gear that are not compatible with the primary uses the AR was constructed for may be prohibited or restrained.

Management measure 17 of the FMP (March 1983) is as follows:

"Prohibition or Restraint of Specific Fishing Gear From Artificial Reefs"

Upon request to the [South Atlantic Fishery Management] Council from the permittee (possessor of a Corps of Engineers permit) for any artificial reef or fish attraction device (or other modification of habitat for the purpose of fishing) the modified area and an appropriate surrounding area may be designated as a Special Management Zone (SMZ) that prohibits or restrains the use of specific types of fishing gear that are not compatible with the intent of the permittee for the artificial reef or fish attraction device. This will be done by regulatory amendment similar to adding or changing minimum sizes (§ 10.2.3):

1. A monitoring team [1] will evaluate the request in the form of a written report considering the following criteria:

a. Fairness and equity

b. Promote conservation

c. Excessive shares.

2. At the request of the Steering Committee, the Council Chairman may schedule meetings of the Advisory Panel (AP) and/or Scientific and Statistical Committee (SSC) to review the report and associated documents and to advise the Council. The Council Chairman may also schedule public hearings.

3. The Council, following review of the Team's report, supporting data, public

[1] Monitoring Team The Team will be composed of members of the Council staff, the Fishery Operations Branch (Southeast Region, NMFS), and the NMFS Southeast Fisheries Center.

comments, and other relevant information, may recommend to the Southeast Regional Director of the National Marine Fisheries Service (RD) that a SMZ be approved. Such a recommendation would be accompanied by all relevant background data.

4. The RD will review the Council's recommendation, and if he concurs in the recommendation, will propose regulations in accordance with the recommendations. He may also reject the recommendation, providing written reasons for rejection.

5. If the RD concurs in the Council's recommendations, he shall publish proposed regulations in the Federal Register and shall afford a reasonable period for public comment which is consistent with the urgency of the need to implement the management measure(s).

The objectives of this proposed rule are as follows: (1) To establish SMZs that prohibit or restrain the use of specific types of fishing gear in order to promote orderly utilization of the resources and reduce user group conflicts; (2) to insure that the ARs will serve their primary intended purposes, to create incentives to maintain them, and to create incentives to establish other ARs and fish attraction devices (FADs), by managing the existing ARs in a manner which will maximize, to the extent practicable, the intended socioeconomic benefits of the ARs and to indicate that, were appropriated, future ARs and FADs will be designated as SMZs upon request; (3) to optimize use ofd biological production and/or create fishing opportunities that would not otherwise exist, thereby maintaining and promoting conservation.

Criteria used were: (1) To provide fairness and equity; (2) to promote conservation; (3) to avoid excessive shares; (4) to ensure SMZs are consistent with the objectives of the FMP, the Magnuson Act and other applicable law; and (5) to consider the natural bottom in and surrounding potential SMZs and impacts on historical uses.

The opportunity to request the Council to designate a SMZ is open to all permit holders and could focus on gear restrictions applicable to any or all user groups. This proposed rule concerns two requests in support of gear restrictions for fish traps, hydraulic and electric reels, longlines, and spearfishing that were received by the Council:

(1) South Carolina—"The South Carolina Wildlife and Marine Resources Department (SCWMRD) requests that the South Atlantic Fishery Management Council utilize its authority to *restrict the fishing methods used on artificial fishing reefs off the South Carolina coast to hand-held hook-and-line fishing and spearfishing.*" South Carolina modified its original request to track Georgia's request that would *"eliminate the taking of jewfish and powerheads (bang sticks)* from areas set aside as special management areas (artificial reefs) off the South Carolina coast." During Council and committee meetings, South Carolina representatives clarified that their intent was to allow the use of hand-held power-operated rods and reels and that their request did not preclude the use of trolling gear (i.e., placing a piece of manually operated hook-and-line gear in a holder).

(2) Georgia—"Since Georgia's offshore artificial reefs are located in the FCZ, resolution of these two problems—fish trapping and powerheading of jewfish—lies within the authority of the South Atlantic Fishery Management Council. For these reasons, please accept this correspondence as a formal application by the Georgia Department of Natural Resources requesting the Council to declare its offshore artificial reefs as special management zones. Further, the Department also requests that the *harvest of fish from these zones be limited to hand held hook-and-line fishing and spearfishing by divers. Spearfishing in these zones, it is recommended, should include the use of powerheads, except in the taking of jewfish, which should only be landed through traditional hook-and-line and other spearfishing techniques.*" During Council and committee meetings, Georgia representatives have clarified that their intent was to allow the use of hand-held power-operated rods and reels and that their request did not preclude the use of trolling gear.

The artificial reefs off South Carolina and Georgia are located on an expansive shelf area with large areas devoid of any hard or live bottom. These areas have not supported any significant fisheries in the past. In fact, these large barren areas have limited the development of recreational fishing. By placing artificial reef material in these locations, fishing opportunities that did not previously exist were created. These locations are not important to the income of commercial trap fishermen, based on discussions with commercial fishermen and input at the public hearings. There is general support for the creation of SMZs in Georgia and South Carolina both among the recreational as well as the commercial sectors. The Council approved South Carolina's and Georgia's requests with one modification. Their request to prohibit the use of powerheads for taking jewfish was expanded to prohibit the retention or possession of jewfish by all gear types and prohibit the taking of jewfish by all types of spearfishing gear (e.g., bang sticks or powerheads, carbon dioxide-powered guns, arbolets, Hawaiian sling and spear, pole guns etc.) Jewfish caught incidentally by hook-and-line gear should be released in a manner to best ensure their survival (e.g., by cutting the line without removing the fish from the water). This modification is being suggested for two reasons: (1) If the resource (large jewfish) is what is important, then protecting the resource should be the objective; and (2) jewfish can be taken by several gear types (powerheads, spearguns, Hawaiian sling and spear, and hook-and-line). Prohibiting only powerheads would not be effective in protecting large jewfish and could be considered unfair and arbitrary.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is consistent with the national standards and other provisions of the Magnuson Fishery Conservation and Management Act and other applicable law.

It was previously determined, on the basis of a regulatory impact review (RIR) and regulatory flexibility analysis (RFA) summarised in the final rule implementing the FMP (48 FR 39466, August 31, 1983) that the rule is not major under Executive Order 12291. A supplemental RIR was prepared for this propose rule; it indicated that the anticipated benefits exceed the compliance cost to the public.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The impact on excluded user groups would be limited to a small segment of the sea bass trap fishery at the present time. State officials estimated that trapping around artificial reefs represents less than five percent of the total commercial sea bass fishery. Further, the excluded area represents an insignificant portion of the available fishing grounds and is not a historical fishing area for trappers. Prohibiting the harvest of jewfish will have a minimal economic impact, because jewfish are sporadic inhabitants of artificial reefs and are not sufficiently abundant to support any sustained fishing activity.

This rule does not contain a collection of information requirement for the

purposes of the Paperwork Reduction Act.

These measures are part of the Federal action for which an environmental impact statement (EIS) was prepared. The final EIS for the FMP was filed with the Environmental Protection Agency and the notice of availability was published on August 19, 1983 (48 FR 37702).

This rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing.

Dated: December 2, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 646 is proposed to be amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for Part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In Part 646, the Table of Contents is amended by adding under Subpart B a new section designation to read as follows:

* * * * *

Sec.

646.24 Area limitations.

3. Section 646.6 is amended by changing the period at the end of paragraph (a)(18) to a semicolon and adding new paragraphs (a) (19), (20), and (21) to read as follows:

§ 646.6 [Amended]

(a)* * *

(19) Fish with any type of fishing gear except hand-held hook-and-line gear or spearfishing gear as specified in § 646.24(b) (1) and (2);

(20) Possess or retain jewfish taken by any type of fising gear or take any jewfish with spearfishing gear or as specified in §646.24(b)(3); or

(21) Fail to release immediately in the water any incidentally caught jewfish as specified in § 646.24(b)(3).

* * * * *

4. A new § 646.24 is added to read as follows:

§ 646.24 Area limitations.

(a) The following artificial reef. and surrounding areas are established as Special Management Zones (SMZ):

(1) *Little River Reef.* The area is bounded by straight lines connecting the following points:

A 33°49.60′ N., 78°30.51′ W.
B 33°48.95′ N., 78°31.30′ W.
C 33°48.92′ N., 78°29.72′ W.
D 33°48.60′ N., 78°30.50′ W.

(2) *Paradise Reef.* The area is bounded on the north by 33°31.59′ N. latitude; on the south by 33°30.51′ N. latitude; on the east by 78°57.55′ W. longitude; and on the west by 78°58.85′ W. longitude.

(3) *Ten Mile Reef.* The area is bounded on the north by 33°26.65′ N. latitude; on the south by 33°25.05′ N., latitude; on the east by 78°51.08′ W. longitude; and on the west by 78°52.97′ W. longitude.

(4) *Pauleys Island Reef.* The area is bounded on the north by 33°26.58′ N. latitude; on the south by 33°25.76′ N. latitude; on the east by 79°00.29′ W. longitude; and on the west by 79°01.24′ W. longitude.

(5) *Georgetown Reef.* The area is bounded on the north by 33°14.90′ N. latitude; on the south by 33°13.99′ N. latitude; on the east by 78°59.45′ W. longitude; and on the west by 79°00.65′ W. longitude.

(6) *Capers Reef.* The area is bounded on the north by 32°45.45′ N. latitude; on the south by 32°43.91′ N. latitude; on the east by 79°33.81′ W. longitude; and on the west by 79°35.10′ W. longitude.

(7) *Kiawah Reef.* The area is bounded on the north by 32°29.78′ N. latitude; on the south by 32°28.25′ N. latitude; on the east by 79°59.20′ W. longitude; and on the west by 80°00.95′ W. longitude.

(8) *Edisto Offshore Reef.* The area is bounded on the north by 32°15.30′ N. latitude; on the south by 32°13.90′ N. latitude; on the east by 79°50.25′ W. longitude; and on the west by 79°51.45′ W. longitude.

(9) *Hunting Island Reef.* The area is bounded on the north by 32°13.72′ N. latitude; on the south by 32°12.30′ N. latitude; on the east by 80°19.23′ W. longitude; and on the west by 80°21.00′ W. longitude.

(10) *Fripp Island Reef.* The area is bounded on the north by 32°15.92′ N. latitude; on the south by 32°14.75′ N. latitude; on the east by 80°21.62′ W. longitude; and on the west by 80°22.90′ W. longitude.

(11) *Betsy Ross Reef.* The area is bounded on the north by 32°03.60′ N. latitude; on the south by 32°02.88′ N latitude; on the east by 80°24.57′ W. longitude; and on the west by 80°25.50′ longitude.

(12) *Hilton Head Reef.* The area is bounded on the north by 32°00.61′ N. latitude; on the south by 31°59.42′ N. latitude; on the east by 80°35.23′ W. longitude; and on the west by 80°36.37′ longitude.

(13) *Artificial Reef—A.* The area is bounded on the north by 30°56.4′ N. latitude; on the south by 30°55.2′ N. latitude; on the east by 81°15.4′ W. longitude; and on the west by 81°16.5′ W. longitude.

(14) *Artificial Reef—C.* The area is bounded on the north by 30°51.4′ N. latitude; on the south by 30°50.1′ N. latitude; on the east by 81°09.1′ W. longitude; and on the west by 81°10.4′ W. longitude.

(15) *Artificial Reef—G.* The area is bounded on the north by 30°59.1′ N. latitude; on the south by 30°57.8′ N. latitude; on the east by 80°57.7′ W. longitude; and on the west by 80°59.2′ W. longitude.

(16) *Artificial Reef—F.* The area is bounded on the north by 31°06.6′ N. latitude; on the south by 31°05.6′ N. latitude; on the east by 81°11.4′ W. longitude; and on the west by 81°13.3′ W. longitude.

(17) *Artificial Reef—J.* The area is bounded on the north by 31°36.7′ N. latitude; on the south by 31°35.7′ N. latitude; on the east by 80°47.0′ W. longitude; and on the west by 80°48.1′ W. longitude.

(18) *Artificial Reef—L.* The area is bounded on the north by 31°46.2′ N. latitude; on the south by 31°45.1′ N. latitude; on the east by 80°35.8′ W. longitude; and on the west by 80°37.1′ W. longitude.

(19) *Artificial Reef—KC.* The area is bounded on the north by 31°51.2′ N. latitude; on the south by 31°50.3′ N. latitude; on the east by 80°46.0′ W. longitude; and on the west by 80°47.2′ W. longitude.

(b) The following restrictions apply within the SMZs.

(1) Fishing may be conducted only with hand-held hook-and-line gear (including manual electric, or hydraulic rod and reel) and spearfishing gear (including powerhead).

(2) The use of fish traps, bottom longlines, gill nets, and trawls is prohibited.

(3) Jewfish may not be harvested by any type of gear. Jewfish taken incidentially by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

[FR Doc. 85-27343 Filed 12-4-86; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 681

Western Pacific Spiny Lobster Fisheries; Availability of Amendment to Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the Western Pacific Fishery Management Council has submitted Amendment 4 to the Fishery Management Plan for the Spiny Lobster Fisheries of the Western Pacific Region (FMP) for Secretarial review and is requesting comments from the public. Copies of the amendment may be obtained from the address below.

DATE: Comments on the plan amendment will be accepted until February 13, 1987.

ADDRESS: All comments should be sent to E. Charles Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Doyle E. Gates, Administrator, Western Pacific Program Office, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396, 808–955–8831.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) requires that each regional fishery management council submit any fishery management plan or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. This act requires that the Secretary, upon reviewing the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

Amendment 4 would close all lobster fishing within 20 nautical miles of Laysan Island and within the fishery conservation zone landward of 10 fathoms in the Northwestern Hawaiian Islands. Amendment 4 is intended to implement conservation and management measures to protect spiny lobsters within refuge areas.

(16 U.S.C. 1801 *et seq.*)

Dated: December 2, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 86–27398 Filed 12–2–86; 4:47 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 51, No. 234
Friday, December 5, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta-Trinity National Forests, Siskiyou County, CA; Intent to Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an environmental impact statement for a proposal to permit the development of Mt. Shasta Ski Area on the Mt. Shasta Ranger District.

A 1926 Order by Secretary of Agriculture Jardine designated 29,620 acres as the Mt. Shasta Recreation Area, including the proposed project area, for use and enjoyment of the general public for recreation purposes. The Mt. Shasta Ranger District Multiple Use Plan (1969) recognizes the winter sports opportunities present in the area, and guided the development of the previous ski area at that location. The 1984 environmental assessment, Mt. Shasta Ski Area Development, addressed the issues of land use and site capacity. The July 16, 1984 decision by then Forest Supervisor Barney Coster established a 1690 acre site that would be available for development of downhill skiing for up to 5000 skiers at one time.

A range of alternatives for this site will be considered. Alternatives will consider development designs with a variety of skier capacities. Alternative locations for uphill facilities, ski runs, and support facilities will be considered. One alternative will be nondevelopment of the site.

Federal, State, and local agencies; project proponents; and other organizations and individuals who may be affected by or interested in the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of significant issues to be examined in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

Public scoping sessions will be held at the following locations and times: Mount Shasta Recreation Center, Mount Shasta, California on January 6, 1987 from 7–9 p.m.; Yreka City Council Chambers, Yreka, California on January 7, 1987 from 7–9 p.m.; and Shasta High School, Room 29, Redding, California on January 8, 1987 from 7–9 p.m.

Robert R. Tyrrel, Forest Supervisor, Shasta-Trinity National Forests, is the responsible official.

The analysis is expected to take about ten months. The draft environmental impact statement is scheduled to be available by October, 1987. The final environmental impact statement should be completed by February, 1988.

Written comments and suggestions concerning the analysis should be sent to Robert R. Tyrrel, Forest Supervisor, Shasta-Trinity National Forests, 2400 Washington Avenue, Redding, California 96001, by January 30, 1987.

Questions about the proposed action and environmental impact statement should be directed to Doug Schleusner, EIS Team Leader, Shasta Lake Ranger District, 6543 Holiday Road, Redding, California 96003, phone (916) 275–1587.

Dated: December 1, 1986.

William V. Carpenter,

Deputy Forest Supervisor.

[FR Doc. 86–27327 Filed 12–4–86; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Certification of Central Filing System

The Statewide central filing system of Maine is hereby certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of informaton submitted by James S. Henderson, Deputy Secretary of State, for all farm products produced in that State.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: December 2, 1986.

B.H. (Bill) Jones,

Administrator Packers and Stockyards Administraton.

[FR Doc. 86–27371 Filed 12–4–86; 8:45 am]

BILLING CODE 3410–KD–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Census of Transportation Truck Inventory and Use Survey
Form number: Agency—TC–9501, TC–9502; OMB—N/A
Type of request: New collection
Burden: 140,000 respondent; 46,200 reporting hours
Needs and uses: The Truck Inventory and Use Survey provides data on the physical and operational characteristics of the nation's truck population. These data are used by government agencies, major manufacturers of trucks and their component parts, and consulting firms to establish policy for the trucking industry and to predict market trends. Respondents of this survey will consist of registered truck owners and leasees.
Affected Public: Individuals or households; farms; businesses or other for-profit institutions; non-profit institutions; small businesses or organizations
Frequency: One-time
Respondent's obligation: Mandatory
OMB desk officer: Timothy Sprehe 395–4814

Agency: Bureau of the Census
Title: 1987 Census of Service Industries
Form number: Agency—various; OMB—N/A
Type of request: New collection
Burden: 10,075,000 respondents; 549,800 reporting hours
Needs and uses: The Economic Censuses, conducted under provisions of title 13 U.S.C., Section 131, constitute the primary source of facts about the structure and functioning of a large segment of the economy and

provide essential information for government, business, and the general public. They also provide an important part of the framework for the national accounts and serve as benchmarks for economic indicators.
Affected Public: State or local governments; businesses or other for-profit institutions; federal agencies or employees; non-profit institutions; small businesses or organizations
Frequency: One time
Respondent's obligation: Mandatory
OMB desk officer: Timothy Sprehe 395–4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: December 2, 1986.

Ed Michals,

Departmental Clearance Officer, Information Management Division Management, Office of Information Resources Management.

[FR Doc 86–27395 Filed 12–4–86; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration
Title: Marketing and Capacity Information Report; Primary Beneficiary Marketing and Capacity Information Report
Form number: Agency—ED–220, ED–220PM; OMB—0610–0082
Type of request: Extension of the expiration date of a currently approved collection
Burden: 40 respondents; 80 reporting hours
Needs and uses: To determine competitive impact of EDA financial assistance to increase production capacity/service delivery by a particular firm/industry, as required by 13 CFR 309.2, entitled "Unfair Competition". Affected public (respondents) consists of enterprises benefiting solely or primarily from proposed EDA grant or loan assistance.
Affected public: Businesses or other for-profit institutions; non-profit institutions; small businesses or organizations
Frequency: Once during application processing
Respondent's obligation: Required to obtain or retain a benefit
OMB desk officer: Timothy Sprehe 395–4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: December 2, 1986.

Ed Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86–27394 Filed 12–4–86; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[A–588–007]

High Capacity Pagers From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain high capacity pagers from Japan. The review covers two manufacturers/exporters of this merchandise to the United States and the period from September 1, 1983 through July 31, 1985. There were no known shipments of this merchandise to the United States by the two firms during the period and there are no known unliquidated entries.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 5, 1986.

FOR FURTHER INFORMATION CONTACT: Dionne C. Calloway or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130/0647.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 16881) the final results of its last administrative review of the antidumping duty order on certain high capacity pagers from Japan (48 FR 37058 August 16, 1983). On October 21, 1985, the Department received a request for an administrative review from Motorola, Inc. the petitioner in this case. Subsequently, a notice of initiation of the antidumping duty administrative review was published in the **Federal Register** on February 12, 1986 (51 FR 5219).

Scope of the Review

Imports covered by the review are shipments of certain Japanese high capacity pagers currently classifiable under items 685.1686 and 685.7036 of the Tariff Schedules of the United States Annotated. The review covers two manufacturers and/or exporters of Japanese high capacity pagers to the United States and the period September 1, 1983 through July 31, 1985.

There were no known shipments of this merchandise to the United States by the two firms during the period and there are no known unliquidated entries. An analysis of the petitioner's comments during the first administrative review however, introduced the possibility that NEC Corporation might be exporting tone-only pagers to the United States in an unfinished condition. We, therefore, requested information regarding exports of unfinished pagers in the course of this review. Because the information provided by the respondents was inadequate for purposes of a scope determination, the decision will be postponed until publication of the final results of this review. Therefore, pending a determination as to whether unfinished pagers are included in this order, we are directing the United States Customs Service to suspend liquidation of all entries of high capacity pagers whether in the form of subassemblies or component parts ("unfinished"), that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** We shall direct the Customs Service not to require a cash deposit on unfinished pagers. This suspension of

liquidation will remain in effect until further notice.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period September 1, 1983 through July 31, 1985:

Manufacturer/exporter	Margin (percent)
Matsushita Communication Industrial Co., Ltd. (MCI)	[1] 109.00
NEC Corporation	[1] 70.35

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made within 5 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for those firms.

For any future entries from a new exporter not covered in this or prior reviews, whose first shipments of certain Japanese high capacity pagers occurred after July 31, 1985, and who is unrelated to any reviewed or previously reviewed firm, a cash deposit of 89.97 percent shall be required. These deposit requirements are effective for all shipments of certain Japanese high capacity pagers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This administrative review and notice are in accordance with § 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: December 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-27383 Filed 12-4-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Roller Chain, Other Than Bicycle, From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by interested parties, the Department of Commerce has conducted an administrative review of the antidumping finding on roller chain, other than bicycle, from Japan. The review covers 21 manufacturers and/or exporters of this merchandise to the United States and generally the period April 1, 1981 through March 31, 1983. The review indicates the existence of dumping margins for some of the firms during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: DECEMBER 5, 1986.

FOR FURTHER INFORMATION CONTACT: Richard P. Bruno or J. Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 1983, the Department of Commerce ("the Department") published in the Federal Register (48 FR 51801) the final results of its last administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9926, April 12, 1973). We began the current review of the finding under our old regulations. After the promulgation of our new regulations, the petitioner and various respondents and importers requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published a notice of initiation of the antidumping duty administrative review on January 21, 1986 (51 FR 2748).

Scope of the Review

Imports covered by the review are shipments of roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle" as used in this review includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain. This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain, other than bicycle, is currently classifiable under various provisions of the Tariff Schedules of the United States Annotated, from item numbers 652.1400 through 652.3800.

The review covers twenty-one manufacturers and/or exporters of Japanese roller chain, other than bicycle, to the United States and generally the period April 1, 1981 through March 31, 1983.

United States Price

In calculating United States price, the Department used purchase price or exporter's sales price ("ESP"), as appropriate, both as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Purchase price was based on the c.i.f. or f.o.b. packed price either to an unrelated purchaser in the United States or to an unrelated Japanese trading company for export to the United States, as appropriate. Exporter's sales price was based on the c.i.f. delivered, c.i.f., or f.o.b. packed price to the first unrelated purchaser in the United States. We made adjustments, where applicable, for foreign and U.S. inland freight, U.S. customs duties, ocean freight, marine insurance, foreign shipping charges, commissions to unrelated parties, brokerage charges, and in ESP calculations the U.S. subsidiary's selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price when sufficient quantities of such or

similar merchandise were sold in the home market, or the price to third countries when insufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison, or constructed value, all as defined in section 773 of the Tariff Act.

Home market and third-country price were based on ex-factory, f.o.b., and delivered packed prices to unrelated purchasers. Constructed value was calculated as the sum of materials, fabrication costs, general expenses, profit, and U.S. packing. The amount added for general expenses was 10 percent of the sum of materials and fabrication costs, or actual general expenses, whichever was higher. The amount added for profit was 8 percent of the sum of materials, fabrication, and general expenses, or actual profit, whichever was higher. We made adjustments, where applicable, for discounts, differences in packing, inland freight, credit costs, warranties, technical assistance, indirect selling expenses to offset U.S. selling expenses for ESP calculations, and differences in the physical characteristics of the merchandise. We disallowed claims for ESP offsets and level-of-trade adjustments when they were not adequately quantified. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Daido Kogyo Co., Ltd./ Daido Corp	4/01/81-3/31/83	0
Daido Kogyo/Meisei Trading Co	4/01/81-3/31/83	0
Deer Island	4/01/81-3/31/83	[1] 15.92
Enuma Chain Mfg. Co., Ltd./Daido Corp	4/01/81-3/31/83	0
Enuma Chain/Meisei Trading	4/01/81-3/31/83	0
Izumi Chain Mfg. Co., Ltd./ Rocky Asia Co	10/01/80-9/30/82	0
Izumi Chain/Shima Trading Co., Ltd	10/01/80-9/30/81	0
	10/01/81-9/30/82	0.14
Izumi Chain/All others	10/01/80-9/30/82	0
Katayama Chain Co., Ltd	4/01/81-3/31/82	0
	4/01/82-3/31/83	[1] 0
Mitsubishi Motors Corp	4/01/81-3/31/83	0
Naniwa Kogyo Co., Ltd	4/01/79-3/31/80	43.29
	4/01/80-3/31/81	0.90
	4/01/81-3/31/83	0
Nissan Motor Co., Ltd	4/01/81-11/30/81	0
	12/01/81-7/31/82	0.12
Suzuki Motor Co., Ltd	4/01/81-3/31/83	0
Takasago Chain Co., Ltd./ Central Industries Inc	4/01/81-3/31/83	0
Takasago Chain/Royal Industries Ltd	4/01/81-3/31/82	15.92
	4/01/82-3/31/83	[1] 15.92
Takasago Chain/Hitachi Metals Ltd	4/01/81-3/31/82	0.35
	4/01/82-3/31/83	0.36
Yamakyu Chain Co., Ltd	4/01/81-3/31/82	0
	4/01/82-3/31/83	[1] 0

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results within 21 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required for these firms. Since the margins for Izumi Chain/Shima Trading, Nissan Motor, and Takasago Chain/Hitachi Metals are less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department waives the cash deposit requirement for these firms. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1983 and who is unrelated to any reviewed firm or any other previously reviewed firm, a cash deposit of 15.92 percent shall be required. These deposit requirements and waivers are effective for all shipments of Japanese roller chain, other than bicycle, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with § 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: November 28, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-27384 Filed 12-4-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-003]

Ceramic Tile From Mexico; Final Results of Countervailing Duty, Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On October 14, 1986, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on ceramic tile from Mexico. The review covers the period July 1, 1983 through June 30, 1984 and fifteen programs.

We gave interested parties an opportunity to comment on the preliminary results. After reviewing all of the comments received, we have determined the total bounty or grant for the period of review to be zero percent for 18 firms and 4.43 percent *ad valorem* for all other firms.

EFFECTIVE DATE: December 5, 1986.

FOR FURTHER INFORMATION CONTACT: Cynthia Gozigian or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 20871) the final results of its last administrative review of the countervailing duty order on ceramic tile from Mexico (47 FR 20013, May 10, 1982). We began this review under our old regulations. On September 10, September 19, October 15, and November 15, 1985, after the promulgation of our new regulations, several exporters and the Mexican government, respectively, requested in accordance with § 355.10 of the Commerce Regulations that we complete the administrative review of this order. We published the new initiation on November 27, 1985 (50 FR 48825) and the preliminary results on October 14, 1986 (51 FR 36581). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Mexican ceramic tile, including non-mosaic, glazed and unglazed ceramic floor and wall title.

Such merchandise is currently classifiable under items 532.4000 and 532.2700 of the Tariff Schedules of the United States Annotated.

The review covers the period July 1, 1983 through June 30, 1984 and fifteen programs: (1) FOMEX; (2) Article 94 of the Banking Law; (3) CEPROFI; (4) FONEI; (5) FOGAIN; (6) state tax incentives; (7) FOMIN; (8) NDP preferential discounts; (9) import duty reductions and exemptions; (10) FIDEIN; (11) Bancomext loans; (12) delay of payments on loans; (13) delay of payments to PEMEX of fuel charges; (14) preferential state investment incentives; and (15) CEDI.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from the petitioner, the Tile Council of America ("TCA"), and from a respondent, Ceramicas y Pisos Industriales de Culiacan ("Ceramicas").

Comment 1: TCA argues that the use of a *de minimis* standard in the zero-rate certification process undermines the logic of a mechanism intended to provide an incentive for exporting firms to forego benefits altogether. TCA contends that only those firms which can demonstrate that they did not and will not receive *any* benefits, not just *de minimis* benefits, should be entitled to a zero duty rate.

Department's Position: We disagree. We consider a *de minimis* benefit equivalent to a zero benefit.

Comment 2. Ceramicas argues that its letter of certification for a zero rate, submitted on May 1, 1986, was in accordance with the certification process established by the Department. Since Ceramicas certified that it had neither applied for nor received countervailable benefits during the period of review, it should be granted a zero assessment rate and a zero rate for cash deposit of estimated countervailing duties.

Department's Position: We disagree. The zero-rate certification from Ceramicas was untimely. The deadline for submitting the certification, specified in the questionnaire, had long since passed by May 1, 1986. To include Ceramicas in the list of zero-rate firms would have obligated us to consider and, at the very least, to verify a few of the 33 ceramic tile producers that submitted zero-rate certifications during May 1986. Since we had already made arrangements for a June 1986 verification, it was not possible to verify any of these additional firms. Without the possibility of verification, our certification process would be meaningless. Therefore, it would be inappropriate to accept zero-rate certifications from Ceramicas or any of the other 32 firms.

Final Results of Review

After considering all of the comments received, we determine the total bounty or grant during the period of the review to be zero for the following 18 certified firms:

(1) Alfareria San Marco, S.A. de C.V.;
(2) Alfareria Montezuma, S.A.;
(3) Arturo Carranza de la Pena;
(4) Azulejos Orion, S.A.;
(5) Ceramica Santa Julia;
(6) Corporacion Euromexicana Comercial, S.A.;
(7) Eduardo S. Garcia de la Pena;
(8) Internacional de Ceramica, S.A.;
(9) Industrias AGE, S.A.;
(10) J. Garza Arocha, S.A.;
(11) Arenas y Barros;
(12) Gres, S.A.;
(13) Juana Maria Ramos Trevino;
(14) Luz Maria de la Pena Sanchez;
(15) Transcon Distribuidora, S.A.;
(16) Pisos Coloniales de Mexico, S.A.;
(17) Porcelanite; and
(18) Vitromex.

For all other firms, we determine the total bounty or grant during the period of review to be 4.43 percent *ad valorem*.

The Department will instruct the Customs Service to assess no countervailing duties on shipments of this merchandise from the 18 zero-rate firms and to assess countervailing duties of 4.43 percent of the f.o.b. invoice price on shipments from all other firms exported on or after July 1, 1983 and on or before June 30, 1984.

The Department will instruct the Customs Service not to collect a cash deposit of estimated countervailing duties, as provided by section 751 (a)(1) of the Tariff Act, on shipments of this merchandise from the 18 zero-rate firms and to collect a cash deposit of 3.13 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: December 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-27390 Filed 12-4-86; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Steel Tacks Request for Comments

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products with respect to certain steel machine tacks for use in the manufacture of footwear.

EFFECTIVE DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, Room 3099, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products provides that if the U.S.

> . . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product. . . .

We have received a short supply request for four types of steel machine tacks used in the manufacture of footwear. All items are made from low carbon rimming or concast steel. The tack types include:

a) Square shank tacks, 5–12 mm in length, 1.04 mm in shank diameter, 2.80 mm in head diameter, and 0.35 mm in head thickness;
b) Square FZ tacks, 5–12 mm in length, 1.04 mm in shank diameter, 2.80 mm in

head diameter, and 0.35 mm in head thickness;

c) Slim square shank tacks, 5–9 mm in length, 0.99 mm in shank diameter, 2.40 mm in head diameter, and 0.30 mm in head thickness;

d) Micro square tacks, 5–7 mm in length, 0.76 mm in shank diameter, 2.10 mm in head diameter, and 0.23 mm in head thickness.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request. Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

November 26, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86–27382 Filed 12–4–86; 8:45 am]

BILLING CODE 3510-DS-M

[A–583–008]

Circular Welded Carbon Steel Pipes and Tubes From Taiwan; Final Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty Administrative review.

SUMMARY: On August 21, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan. The review covers two manufacturers and/or exporters of this merchandise to the United States and the period October 1, 1983 through April 30, 1984.

We gave interested parties the opportunity to comment on our preliminary results. In addition, the Department accepted additional sales information from one of the manufacturers on August 27, 1986. Based on this new sales data, the final results of review have changed from those presented in the preliminary results of review for that one firm. The final results of review are unchanged from those presented in the preliminary results for the other firm.

EFFECTIVE DATE: December 5, 1986.

FOR FURTHER INFORMATION CONTACT: Deborah Grossman or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 29954) the preliminary results of its administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan (49 FR 19369, May 7, 1984). We began this review of the order under our old regulations. After the promulgation of our new regulations, two respondents, Far East Machinery Co., Ltd. (FEMCO), and Yieh Hsing Enterprise Co., Ltd., and an importer, Voss International Corporation, requested that we complete the administrative review in accordance with 353.53a(a) of the Commerce Regulations. The review of Yieh Hsing's withdrawal of its request for an adminstrative review of the period. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The imports covered by the review are shipments of certain circular welded carbon steel pipes and tubes. The Department defines such merchandise as welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inches, and 0.375 inches or more but not over 4.5 inches in outside diameter, which are currently classifiable under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243 and 610.3252 of the Tariff Schedules of the United States Annotated ("TSUSA").

The review covers two of the seven known manufacturers and/or exporters of certain Taiwanese circular welded carbon steel pipes and tubes to the United States and the period October 1, 1983 through April 30, 1984.

One of the manufacturers, Tai Feng Industries, went out of business in November 1983 and did not respond to our questionnaire. For that firm the Department used the best information available for assessment purposes. The best information available was the most recent antidumping duties cash deposit rate for that firm.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. The petitioner, the standard pipe subcommittee of the Committee on Pipe and Tube Imports, the respondent, FEMCO, and a new exporter, An Mau Steel Co., Ltd., submitted comments.

Comment 1: FEMCO claims that the duty drawback adjustment should be granted given that the claim is substantiated in its original questionnaire response. In addition, FEMCO states that it is lawful for the Department under § 353.46 of the Commerce Regulations to accept additional information after the preliminary results of review. FEMCO had no reason to believe the duty drawback information on record at the time of the preliminary results would be insufficient to substantiate the claimed adjustment since the same type of information was accepted during the original investigation of sales at less than fair value (SLTFV). Therefore, it would be mainfestly unjust for the Department not to accept its later submission.

The petitioner contends that the Department was correct in determining that FEMCO had not substantiated its claim for a duty drawback adjustment to United States price before the preliminary results of review. The petitioner further states that the Department is not obligated to accept duty drawback information after the publication of preliminary results. FEMCO was aware well before the publication that it was required by the Department to tie its imported raw material inputs to the exported merchandise.

Department's Position: FEMCO did not provide adequate information in a timely manner to substantiate its duty drawback claim. Although the Department requested information necessary to substantiate the claim, FEMCO failed to provide any information other than the amount rebated and the Taiwan Customs statute before the preliminary results of review. The Department also requires documentation showing import duties paid on sufficient quantities of the raw material to account for rebates upon exportation of the merchandise under review. FEMCO provided no such documentation. We agree with the petitioner that the Department is not obligated to accept information after the preliminary results of review. We decided to accept the information in

question because in FEMCO's case the Department's original request was subject to differing interpretations.

Comment 2: FEMCO claims that the chain of documentary evidence presented in its August 27, 1986 submission provides the necessary information for the Department to allow a duty drawback adjustment. FEMCO claims that, inasmuch as the duty rebate is granted by Taiwanese Customs by reason of the exportation of the merchandise, the Department must allow the adjustment. As long as the company imported an input for pipe, such as coil, and exported pipe, the Department should grant a duty drawback adjustment. FEMCO cites § 353.10(d)(1)(ii) of the Commerce Regulations and concludes that there is no requirement that the exporter establish that the input on which drawback was paid was physically incorporated into the exported goods.

The petitioner asserts that FEMCO is not entitled to a duty drawback adjustment based on the documents submitted on August 27, 1986. It claims that there is no indication that the exported products noted are the subject standard pipe, or destined for the United States. More importantly, however, the coil sizes and special grade coil listed on most of the import licenses could not have been used in the production of small diameter standard pipe not over 4.5 inches in outside diameter. In sum, FEMCO applied and received duty drawback on imported coil that is not used in the production of the standard pipe by the duty order.

Department's Position: We agree with the petitioner. While the exporter does not need to show that a certain import was incorporated into a specific shipment of the product to the United States, the imported steel coil must have been appropriate for incorporation into the exported subject merchandise. FEMCO admits that only two types of coil shown on the copies of the import licenses submitted to the Department are used to produce standard pipe. The quantities shown are not sufficient to account for the exported merchandise. Under the principle of drawback substitution, "we regard drawback claims to be reflective of duties paid on the imported raw material if there is evidence of sufficient imports of that raw material to account for exports of the manufactured product." See *Final Determination of Sales of Less than Fair Value: Acrylic Film, Strip and Sheet, at least 0.030 Inch in Thickness from Taiwan* (49 FR 10968, March 23, 1984).

Comment 3: FEMCO contends that the adjustment should be allowed since the same type of documents were verified during the SLTFV investigation and the duty drawback adjustment was accepted.

The petitioner argues that FEMCO cannot rely on information submitted during the SLTFV investigation to secure a duty drawback adjustment since FEMCO was not a party to that investigation.

Department's Position: We agree with the petitioner. FEMCO was not a party to the SLTFV investigation and the verification of information submitted by other companies for the investigation is irrelevant to this review.

Comment 4: FEMCO claims that the duty drawback adjustment should be allowed since the Department cited numerous Taiwanese cases in support of the final SLTFV determination illustrating that the drawback allowance constitutes an allowable adjustment. Moreover, since the time of the SLTFV determination, there have been many more Taiwanese cases in which the Department allowed an adjustment for duty drawback.

The petitioner states that the Department's past findings, under other circumstances, that Taiwan's general duty drawback system is reasonable and irrelevant. The application of Taiwan's duty drawback system is unreasonable when applied to the facts of this case.

Department's Position: We agree with the petitioner. Although the Department has allowed a duty drawback adjustment under Taiwanese Customs law in certain cases, the Department grants an adjustment only when the respondent supports its claim in the proceeding at hand.

Comment 5: FEMCO claims that the August 27, 1986 submission was "requested" and the documents provided were intended to give an *example* of a duty drawback claim and receipt, not a complete reporting of duty drawback on U.S. sales. Therefore, although only one of the U.S. sales is covered in the duty drawback documentation, this information is sufficient for the Department to make the duty drawback adjustment.

Department's Position: We disagree. The Department requested in April 1986 that FEMCO tie its imports of material inputs to the subject merchandise it exported to the U.S. FEMCO failed to do so prior to publication of the preliminary results, FEMCO supplied documentation to support its duty drawback claim. Not until October 14, 1986 did FEMCO reveal that the August 27, 1986 submission documented drawback for only one U.S. sale. The single "example" supplied is not sufficient substantiation of the claimed duty drawback adjustment. See response to comment 2.

Comment 6: FEMCO argues that since the company would be granted a duty drawback allowance according to U.S. Customs Service regulations regarding substitution drawback, 19 CFR 191.4(a)(2), the Department has no grounds to deny FEMCO's claim. FEMCO further contends that T.D. 81–74, *US Drawback Contract Under 19 U.S.C. 1313(b) Articles Manufactured Using Steel*, specifically states that the exported product can vary in size (e.g. gauge) from the duty paid steel. Additionally, if duty paid steel can enter into the United States under the same tariff item as steel used to manufacture the article, then the gauge of the steel is irrelevant.

The petitioner asserts that the U.S. Customs Service regualtions, 19 CFR 191.4(a)(2), require that the input for production of a finished product and the input for which drawback is claimed be of the "same kind and quality." Pipes of different sizes and grades are not all the same kind and quality. In addition, the petitioner claims that FEMCO quotes from T.D. 81–74 out of context, and fails to mention all the conditions that must be met before U.S. duty drawback is paid. FEMCO would not receive duty drawback if it were a U.S. claimant.

Department's Position: The treatment of duty drawback under U.S. Customs regulations is irrelevant to the administration of section 772(d)(1)(B) of the Tariff Act.

Comment 7: The petitioner contends that if the Department should grant an adjustment for duty drawback, it must (1) limit the adjustment to the amount of duty paid reflected on the one submitted invoice for coil that could have been used to produce the subject merchandise, and (2) allocate that duty among the entire tonnage of standard pipe exported.

Department's Position: Because we are denying FEMCO's claimed duty drawback adjustment, there are moot issues.

Comment 8: The petitioner states that the Department should use the purchase price sales made by FEMCO through an unrelated exporter that were submitted after the preliminary results.

Department's Position: We agree. The Department identified certain unreported purchase price sales after the preliminary results and requested more information regarding those sales. We have reviewed these sales and included any margins found thereon in our calculation of the weighted-average margin for FEMCO.

Comment 9: An Mau, a new exporter, contends that it is inequitable and unlawful to change the cash deposit rate for new shippers from 9.7 percent, the rate established in the SLTFV investigation, to 37.76 percent, the rate established in the preliminary results of review, for a company that has never been determined to be selling the subject merchandise at less than fair value. In accordance with *Diversified Products* v. *United States*, 6 CIT 155 (1983), the Department, under the circumstances of this case, must use the most reliable data available to estimate An Mau's antidumping liability. An Mau argues that it is inappropriate to set the rate for new shippers based on the analysis of a single unrelated shipper when that rate for the most part is based on an inadequate submission. Furthermore, the Department has reliable data regarding An Mau's sales for the most current administrative review period, May 1, 1985 through April 30, 1986. This data is the best information upon which to base An Mau's cash deposit rate; the next best information is the verified data of the SLTFV investigation in which the 9.7 percent rate was established.

The petitioner claims that An Mau has not provided any legal or precedential authority supporting its claim that the Department should continue to use the new shippers' rate from the SLTFV determination as the cash deposit rate for new exporters. The Department's established practice has required companies whose first shipment occurred after the most recent review period to receive the new shippers' rate resulting from the review of that period. The petitioner contends that *Diversified Products* v. *United States* affirms the Department's practice of setting the cash deposit rate for new shippers at the weighted-average rate for all responding firms during the period.

Department's Position: It is the Department's practice in an administrative review to use as the new shippers' rate the highest of the rates of all responding firms with shipments during the period. In this case, FEMCO's submission was inadequate and resulted in a disallowance of FEMCO's largest claimed adjustment. Since a significant portion of the margin was due to the inadequacy of FEMCO's submission, we consider FEMCO to be a non-responsive firm for the purposes of the establishment of the new shippers' rate. The Department will continue the rate of 9.7 percent established in the final SLTFV determination as the new shippers' rate for this review.

Final Results of the Review

We invited interested parties to comment on the preliminary results. Based on our analysis of the data and comments received, we have revised our preliminary results for FEMCO and the cash deposit rate for new exporters. We determine that the following weighted-average margins exist for the period October 1, 1983 through April 30, 1984:

Manufacturer/exporter	Margin (percent)
Far East Machinery Co., Ltd	41.22
Tai Feng Industries	43.70

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service Individual differences between United States price and foreign market value may vary from the percentage stated above for FEMCO. Further, as provided for in section 751(a) of the Tariff Act, a cash deposit of estimated antidumping duties based upon the above margins shall be required for FEMCO.

For any shipments from the remaining manufacturers and/or exporters specifically covered in the antidumping duty order but not covered by this administrative review, the cash deposit will continue to be at the rates published in the antidumping duty order for each of those firms (49 FR 19369, May 7, 1984). For any future entries of this merchandise from a new exporter not covered in the investigation or this administrative review, whose first shipments occurred after April 30, 1984 and who is unrelated to any reviewed firm, a cash deposit of 9.7 percent shall be required. These deposit requirements are effective for all shipments of certain circular welded carbon steel pipes and tubes from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-27388 Filed 12-4-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-001]

Cotton Sheeting and Sateen From Peru; Final Results of Countervailing Duty, Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty, administrative review.

SUMMARY: On October 6, 1986, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on cotton sheeting and sateen from Peru. The review covers the period January 1, 1983 through December 31, 1983 and three programs.

We gave interested parties an opportunity to comment on the preliminary results. After reviewing all of the comments received, we determine the total bounty or grant during the period of review to be 18.13 percent *ad valorem.*

EFFECTIVE DATE: December 5, 1986.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 35540) the preliminary results of its administrative review of the countervailing duty order on cotton sheeting and sateen from Peru (48 FR 4501, February 1, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Peruvian cotton sheeting and sateen consisting of: (1) Plain-woven cotton fabric sheeting, not fancy or figured and not napped, made of singles yarn, with an average yarn number between 3 and 26, imported in Textile and Apparel Category 313, currently classifiable under items 320.—19 and 320.—34 of the Tariff Schedules of the United States Annotated ("TSUSA"); and (2) 100% carded cotton sateen fabrics woven with a satin weave and not napped, imported in Textile and Apparel Category 317, and currently classifiable under TSUSA items 320.—52 and 321.—93.

The review covers the period January 1, 1983 through December 31, 1983 and three programs: (1) CERTEX: (2) FENT: and (3) the Export Law.

In the preliminary results, we understand the total CERTEX benefit by using in our calculations the benefit reported in the questionnaire response for one firm rather than the verified amount. We have corrected our calculations and determine the benefit from this program to be 14.36 percent *ad valorem*.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the Government of Peru.

Comment 1: The Government of Peru claims that the Department overstated the benefit from dollar-denominated FENT loans by using as a benchmark the interest rate for dollar-denominated loans available from local banks instead of the interest rate for dollar-denominated loans available from foreign banks. Since the Department used the latter rate as benchmark for the required external dollar loans, it should use the same rate for the dollar-denominated FENT loans.

Department's Position: We disagree. For our domestic loan benchmark, it is our policy to use interest rates on the most comparable form of financing available in the domestic market.

Comment 2: The Government of Peru contends that the Department incorrectly calculated the portion of the Article 16 deposit rate attributable to one firm. The government also argues that the Department should exclude, for cash deposit purposes, any duties exonerated in 1984. Such exoneration produces no benefit beyond 1984, and the Department will countervail the benefit from the 1984 exonerated duties in its 1984 administrative review.

Department's Position: We agree with the first point and have recalculated the deposit rate for Article 16. We disagree with the second point. It is inappropriate to exclude the duties exonerated after the period of review because we have no information on other benefits that firms may have received in 1984 (such as new duty deferrals). We will address the exonerated duties in our administrative review for 1984.

In addition, in our preliminary results we understated the total benefit from Article 16 by using the incorrect value of exports for one exporter. We determine the total benefit from this program to be 2.96 *ad valorem* during the period of review. For purposes of cash deposit of estimated countervailing duties, we determine the benefit to be 2.05 percent *ad valorem*.

Final Results of Review

After reviewing all of the comments received and recalculating the benefits, we determine the total bounty or grant to be 18.13 percent *ad valorem* for the period of review.

The Department will instruct the Customs Service to assess countervailing duties of 18.13 percent of the f.o.b. invoice price on any shipments exported on or after January 1, 1983 and on or before December 31, 1983.

The elimination of the FENT loans and of the CERTEX benefits on exports of this merchandise to the United States has reduced the total estimated bounty or grant to 2.05 percent *ad valorem*. Therefore, the Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 2.05 percent of the f.o.b. invoice price on all shipments of cotton sheeting and sateen from Peru entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: December 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-27389 Filed 12-4-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-401-602]

Preliminary Affirmative Countervailing Duty Determination; Certain Stainless Steel Hollow Products from Sweden

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Sweden of certain stainless steel hollow products (SSHP). The estimated net subsidy for SSHP is 1.24 percent *ad valorum* for all manufacturers, producers, or exporters in Sweden.

We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of SSHP from Sweden that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net subsidy.

It was originally contemplated that more than one investigation of SSHP from Sweden would be undertaken. Hence, our notice of initiation referred to "investigations" of certain stainless steel hollow products. Based on further deliberations by the Department's industry experts, and after a careful review of the relevant facts, we preliminarily determine that, in fact, only one "class or kind of merchandise" is being investigated. If this investigation proceeds normally, we will make our final determination by February 17, 1987.

EFFECTIVE DATE: December 5, 1986.

FOR FURTHER INFORMATION CONTACT: Jack Davies, Carole Showers, or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1785, 377-3217, or 377-0161.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Sweden of SSHP. For purposes of this investigation, the following programs are found to confer subsidies:

- 1977-1979 Structural Reorganization Fund
- 1983-1984 Specialty Steel Restructuring Program—Forgiveness of Long-Term Investment Loan to Avesta AB
- Regional Development Incentives
- 1978-1979 Employment Promotion Grants
- Research and Development Assistance to Companies

We preliminarily determine the estimated net subsidy for SSHP to be 1.24 percent *ad valorem* for all manufacturers, producers, or exporters in Sweden.

Case History

On September 5, 1986, we received a petition in proper form from the Specialty Tubing Group and its six member companies filed on behalf of the U.S. industry producing SSHP. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Sweden of SSHP directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on September 25, 1986, we in initiated this investigation (51 FR 35018, October 1, 1986). We stated that we expected to issue a preliminary determination by December 1, 1986.

Since Sweden is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On October 20, 1986, the ITC determined that there is a reasonable indication that these imports materially injure, or threaten material injury to, a U.S. industry.

We presented a questionnaire concerning the allegations to the Government of Sweden in Washington, D.C. on October 6, 1986.

On November 5, 1986, we received a response to our questionnaire from the Government of Sweden, AB Sandvik Steel, Sandvik AB, Avesta Sandvik Tube AB, and Avesta AB. According to information on the record of this investigation, there are two known manufacturers, producers, and exporters of SSHP in Sweden: AB Sandvik Steel and Avesta Sandvik Tube AB. AB Sandvik Steel, wholly owned by Sandvik AB, produces and exports seamless SSHP. Avesta Sandvik Tube AB, owned 75 percent by Avesta AB and 25 percent by Sandvik AB, produces and exports welded SSHP. Avesta Sandvik Tube AB was formed when Avesta AB acquired the stainless steel facilities and assets of Fagersta AB and Uddeholm AB under the 1984 Specialty Steel Restructuring Program.

On November 17, 1986, petitioners requested a full extension of the period within which a preliminary countervailing duty determination must be made pursuant to section 703(c)(1) of the Act, and 19 CFR 355.28(c) of our regulations. Because this request was not filed in a timely manner, we were unable to extend the deadline for the preliminary determination.

On November 20 and 21, 1986, we received letters on behalf of the companies under investigation challenging the standing of the Specialty Tubing Group and requesting dismissal of the petition. As we have previously stated (see *e.g., Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada* (51 FR 10041, March 24, 1986)], neither the Act nor the Commerce Regulations requires a petitioner to establish affirmatively that it has the support of a majority of a particular industry. The Department relies on petitioner's representation that it has, in fact, filed on behalf of the domestic industry, until it is affirmatively shown that this is not the case. Where domestic industry members opposing an investigation provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will review whether the opposing parties do, in fact, represent a major proportion of the domestic industry. In this case, we have not received any opposition from the domestic industry.

Scope of Investigation

The products covered by this investigation are certain stainless steel hollow products including pipes, tubes, hollow bars, and blanks therefor, of circular cross-section, containing over 11.5 percent chromium by weight, provided for in items 610.3701, 610.3727, 610.3731, 610.3741, 610.3742, 610.5130, 610.5202, 610.5229, 610.5230, and 610.5231 of the *Tariff Schedules of the United States Annotated.*

Analysis of Programs

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidization (the review period) is calendar year 1985. Based upon our analysis of the petition and the responses submitted by the Government of Sweden, AB Sandvik Steel, Sandvik AB, Avesta Sandvik Tube AB, and Avesta AB, to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined to Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Sweden of the subject merchandise under the following programs:

A. 1977–1979 Structural Reorganization Fund

Petitioners allege that in 1977 the Government of Sweden established a Structural Reorganization Fund for loans and loan guarantees specifically limited to the SSHP industry. Petitioners claim that the loans were made at rates inconsistent with commercial considerations, and the loan guarantees resulted in borrowing on open capital markets at below commercial market rates. Petitioners further allege that the companies (or their successors) that received these loans, and loan guarantees, restructured the industry by engaging in mergers and forming joint ventures to manufacture the subject merchandise.

The Structural Reorganization Fund is governed by the Swedish Code of Statutes (SFS) 1977:1123. According to the government response, the purpose of this program was to facilitate needed structural change within the specialty steel industry. Aid was given in the form of loans (investment, conditional, and liquidity) and loan guarantees. The loans and loan guarantees that were given under this program are as follows: Long-term investment loans to Avesta AB and Sandvik AB for use in building continuous casting plants; long-term conditional loans by Nyby Uddeholm AB (a company which produced SSHP and was later purchased by Avesta AB); and government guarantees for commercial loans to Avesta AB and Nyby Uddeholm AB. According to the responses, no liquidity loans were given under this program to the companies under investigation.

Certain of the loans and loan guarantees provided under this program are treated in other sections of this notice as follows: (1) The investment

loan provided to Avesta AB and later forgiven by the government under the 1984 Restructuring Program is discussed in section I.B; (2) the conditional loans provided to Nyby Uddeholm AB and later transferred by the government to the parent company, Uddeholm AB, under the 1984 Restructuring Program are discussed in section II.A; and (3) the loan guarantees provided to Nyby Uddeholm AB are discussed in section III.A.

Therefore, the only remaining assistance under this program that must be considered here is an investment loan to Sandvik AB and loans guarantees to Avesta AB. Because the investment loan and loan guarantees under this program were provided solely to the specialty steel industry, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries.

To determine whether the investment loan to Sandvik AB was inconsistent with commercial considerations, we compared the amount of interest actually paid by Sandvik AB in 1985 to the amount of interest the company would have paid if this loan were granted on terms consistent with commercial considerations. Since the investment loan was a long-term, variable rate loan, we used the short-term loan benchmark for 1985 to calculate the amount of interest the company would have paid if the loan were granted on terms consistent with commercial considerations. We divided the interest differential by the total 1985 steel sales of all products to all markets by Sandvik AB plus the 1985 sales of Avesta Sandvik Tube AB.

To determine whether the government loan guarantees to Avesta AB were inconsistent with commercial considerations, we compared the guarantee fee paid by Avesta AB to the highest average fee in 1985 on secured loans, as listed in the *1985 Statistical Yearbook of the Swedish Riksbank*. Based on this comparison, we find that the fee the government charged to guarantee the loans is also inconsistent with commercial considerations. Accordingly, we also preliminarily determine that these loan guarantees are countervailable. To calculate the benefit conferred by the loan guarantees we multiplied the difference in the guarantee fees by the amount of principal outstanding on these loans during the review period. We divided this benefit by total 1985 sales by Avesta AB of all products to all markets.

Adding the benefits from the loan and loan guarantees, we arrive at an estimated net subsidy of 0.088 percent *ad valorem* for SSHP.

B. 1983–1984 Specialty Steel Restructuring Program—Forgiveness of Long-Term Investment Loan to Avesta AB

Petitioners allege that in 1984 there was a further restructuring of the specialty steel industry in Sweden during which time the Swedish government provided the industry with investment loans, liquidity loans, and government loan guarantees. Petitioners further allege that this restructuring included conditional reconstruction loans and loans that were forgiven by the government.

The Specialty Steet Restructuring Program is governed under Government Bill 1983/84:157. This bill established the terms of the restructuring of the specialty welded steel industry, under which assets of three independent, unrelated companies (Avesta AB, Fagersta Sandvik Tube AB, and Nyby Uddeholm AB) were merged into one company, Avesta Sandvik Tube AB. Avesta AB purchased the stainless steel facilities and assets of Fagersta AB (*i.e.*, Fagersta Sandvik Tube AB) and Uddeholm AB (*i.e.*, Nyby Uddeholm AB) to form this new company. Avesta AB controls 75 percent of the ownership of the new company and Sandvik AB controls 25 percent.

One of the factors upon which this negotiated purchase was contingent was the government's forgiveness of various loans held by the companies involved. Three of these loan write-offs are at issue in this investigation. One is discussed in this section and the other two are discussed in section III.A of this notice. The loan discussed in this section was given to Avesta AB under the 1977–79 Structural Reorganization Fund (see section I.A of this notice) and later forgiven under the current program in 1984.

We preliminary determine that the government's forgiveness of Avesta AB's loan is countervailable, because it is limited to a specific enterprise or industry, or group of enterprise or industries. We treated the forgiveness of the 1978 Avesta AB loan as a grant. In accordance with the grant methodology, we allocated the amount of the loan principal forgiven in 1984 (the grant amount) over 15 years (the average useful life of renewable physical assets for the steel industry) using the weighted-average cost of capital for 1984, the year in which the loan was forgiven. To calculate the *ad valorem* benefit conferred by the forgiveness of the loan, we divided the 1985 benefit by the total value of 1985 SSHP sales. The estimated net subsidy is 0.407 percent *ad valorem*.

C. Regional Development Incentives

The regional development assistance programs provide asssistance to promote new employment in regions with high unemployment or retarded development. Assistance is provided in the form of localization grants and loans. These are granted for location of industry, freight relief, regional investment projects, health care facilities, building and construction, and various employment schemes. According to the government response, the size of the location grant or loan is determined by several factors, including the number of new jobs created by the investment, the size of the investment, and the area in which it is made.

The response lists Sandvik AB as a direct recipient of a loan and a grant. Avesta AB is listed as a direct recipient of freight relief and of two loans, which were later forgiven under the 1984 Restructuring Program (see section I.B). Fagersta AB and Nyby Uddeholm AB were listed as recipients of localization loans under this program (all but one of which is discussed in section III.A of this notice). One of the loans received by Fagersta AB under this program and later transferred to Avesta AB, was forgiven in 1985 and is included below. We determine that all of the above assistance is limited to companies in specific regions.

We compared the loan terms for Sandvik AB and Avesta AB on those loans under this program which were not forgiven under the 1984 Restructuring Program with our benchmark interest rate, which in this case consists of the effective base rate for 15-year industrial bonds, as listed in the response to the Swedish government. On the basis of this comparison, we found that these loans were not on terms inconsistent with commercial consideration.

For the grant under this program, we evaluated the benefits in accordance with the grant methodology in the Subsidies Appendix. Since the amount of the 1973 grant (the only grant provided in 1973) was less than 0.5 percent of sales for that year, we expensed the grant fully in the year of receipt. Therefore, no benefit was provided during the review period.

For loans which were forgiven, we determine that the forgiveness is countervailable. We treated those portions of the loans which were forgiven as grants. In accordance with the grant methodology, we allocated the amount of the loan forgiven in 1984 (the grant amount) over 15 years using the weighted-average costs of capital in the

year in which the loan was forgiven. For the loan forgiven in 1985, because the sum of all grants received by Avesta AB for that year was less than 0.5 percent *ad valorem*, we expensed the entire amount of the grant in the year of receipt.

For the freight relief provided under the regional development incentives program, we expensed the amount received during the review period.

We divided the sum of the benefits from the forgiven loans and freight relief by total sales of SSHP for the review period to arrive at an estimated net subsidy of 0.734 percent *ad valorem* for SSHP.

D. 1978–1979 Employment Promotion Grants

In the Department's *Final Affirmative Countervailing Duty Determinations; Certain Carbon Steel Products from Sweden* (*Carbon Steel*) (50 FR 33375, August 19, 1985), we determined that certain Swedish employment promotion grants conferred subsidies. We verified that in March 1977, the Swedish Parliament passed a bill (1976/77:55) under which grants were paid to companies recognized as the dominant employers in a particular community. In order to prevent layoffs, these grants were designed to cover 75 percent of the wages and salaries of surplus workers who performed work at the company unrelated to normal production activities. We found a portion of the program to be countervailable because after July 1978, benefits under the program were limited solely to the steel industry.

According to the government response in this case, and consistent with our findings in *Carbon Steel*, the program was originally available to virtually all industries within Sweden. The only industries excluded during this period were textiles and shipyards. The response also states that the program was later limited to steel producers. However, the effective dates according to the government response are different from the dates verified in the earlier case. In the *Carbon Steel* case, we verified that the grants were available only to the steel industry for the period July 1978 through June 1979. The government response lists the dates as July 1979 to December 1979. The importance of this discrepancy lies in the fact that the government response indicates that the companies under investigation received all their grants between June 1977 and December 1978—before the program was limited to steel.

It is our practice in preliminary determinations, in the absence of persuasive evidence to the contrary, to accept a response where it is alleged that no benefits were received under a particular program. All such responses are, of course, subject to verification. If it cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination. Here, the Department does have persuasive evidence which conflicts with the government response. Therefore, we preliminarily determine that between July 1978 and June 1979, this program provided countervailable benefits because it was limited to a specific enterprise or industry, or group of enterprises or industries.

To calculate the benefit to producers of SSHP from employment promotion grants and training funds received between July 1978 and June 1979, we applied our grant methodology. Because the sum of all grants received by Avesta AB in 1978 was greater than 0.5 percent *ad valorem*, we allocated the benefits from the grant over 15 years (the average useful life of renewable physical assets for the steel industry). We used as our discount rate Avesta AB's 1978 weighted-average cost of capital. We divided the 1985 portion of the benefits by total sales for the review period to arrive at an estimated net subsidy of 0.009 percent *ad valorem* for SSHP.

E. Government Funding to Companies for Research and Development

The Swedish Board of Technical Development (STU) provides direct funding to Swedish industries for research and development purposes. Repayment of the monies given as grants is conditional upon the success of the funded project. If the project is successful, these grants are repaid to the government with interest. According to *Carbon Steel*, results obtained from direct funding of individual corporate research and development projects are not publicly available.

The government and company responses list two grants to Sandvik AB for projects related to SSHP; three grants to Nyby Uddeholm for projects related to SSHP, one of which was successful and has been repaid (these grants are discussed in section III.A); and two loans to Avesta AB, one for a project related to SSHP, which was successful and has been repaid, and the other for a project which does not appear to be related to SSHP.

Because the results of the government funded corporate research and development projects are not publicly available, we preliminarily determine the research and development funds provided to these companies, and not repaid, to be countervailable.

We did not include in our calculations loans which had been repaid before the review period or loans which were not applicable to SSHP. We determined that the amounts of the 1982 grants to Sandvik AB were less than 0.5 percent *ad valorem* of sales in that year and thus, were expensed fully in the year of receipt. Therefore, we determine that these grants do not provide any benefits during the review period.

II. Programs Preliminarily Determined Not To Confer Subsidies

We preliminarily determine that subsidies are not being provided to manufacturers, producers, or exporters in Sweden of the subject merchandise under the following programs:

A. Transfer of 1979 Government Conditional Loans to Uddeholm

Petitioners allege that the Government of Sweden, as part of the 1977–1979 Structural Reorganization of the steel industry described in section I.A of this notice, provided conditional loans to Nyby Uddeholm. Petitioners contend that these loans were made on terms inconsistent with commercial considerations and were limited to the specialty steel industry.

According to the responses of the Government of Sweden and Avesta AB, between 1979 and 1983, the Government of Sweden provided various conditional loans to Nyby Uddeholm AB. In 1983 and 1984, an agreement was reached among the government and various specialty steel producers which led to the acquisition of Nyby Uddeholm AB's stainless steel operations by Avesta AB (see section I.B of this notice).

As part of the arrangement which led to this purchase by Avesta AB of Nyby Uddeholm AB, the conditional government loans were transferred to Uddeholm AB (Nyby Uddeholm AB's parent company) and were not assumed by Avesta AB when it took control of Nyby Uddeholm AB's assets. Because the loans, as well as any countervailable benefit therefrom, were transferred to Uddeholm AB, a company which, according to the response, neither produces nor exports the products under investigation, we preliminarily determine that there is no subsidy being conferred by this program upon exports of SSHP to the United States during the review period.

B. Bank Guarantee on 1984 Stock Issuance by Avesta

Petitioners allege that in 1984, as part of the structural reorganization of the

specialty steel industry described in section I.B, and also as part of the deal that facilitated the merger of Avesta AB and Nyby Uddeholm AB, the government provided guarantees of stock issued by Avesta AB in 1984. Petitioners assert that the capital raised by this stock issuance was used by Avesta AB to support its stainless steel operations.

According to the responses of the Government of Sweden and Avesta AB, Avesta AB's stock issued in 1984 was underwritten and guaranteed by Skandinaviska Enskilda Banka, a commercial bank that is not owned or controlled by the government. The response further states that an underwriter's guarantee is standard practice in Sweden. Because there is no evidence that the government had any role in the guarantee provided for Avesta AB's 1984 stock issuance, we preliminarily determine that no countervailable benefit was bestowed under this program.

C. 1972 and 1976–1978 Inventory Grants

Petitioners allege that the Government of Sweden has provided funding for increases in stainless steel inventories in order to keep surplus personnel employed.

According to the responses of the Government of Sweden, Avesta AB, and Avesta Sandvik Tube AB, inventory grants have been provided pursuant to the Swedish Code of Statutes (SFS) 1971:1249, ss 1 and 2. The purpose of the program is to maintain existing level of employment.

To receive a grant under this program, the company must have at least 20 employees and the inventories of finished or semifinished goods manufactured by the company must have increased over a certain period of time. If a grant is received, the company must undertake to maintain its existing levels of employment.

Both company responses state that this program was, and is, available to all Swedish manufacturers. Figures provided in the government response support this statement. Because there is no indication that this program is limited to producers of stainless steel products, or is otherwise limited to a specific enterprise or industry, or group of enterprises or industries or to specific regions within Sweden, we preliminarily determine that no countervailable benefit was bestowed under this program.

III. Programs for Which Additional Information Is Needed

We preliminarily determine that we need additional information in order to determine whether the following programs confer subsidies on the manufacture, production, or exportation of SSHP.

A. 1983–1984 Specialty Steel Restructuring Program—Forgiveness of Long-Term Investment Loans to Fagersta AB and Nyby Uddeholm AB, Localization Loans to Fagersta AB and Nyby Uddeholm AB, Loan Guarantees to Nyby Uddeholm AB, and Research and Development Grants to Nyby Uddeholm AB

Petitioners allege that during the 1984 Specialty Steel Restructuring Program, the Government of Sweden forgave long-term investment loans given to Fagersta AB and Nyby Uddeholm AB under the 1977–1979 Structural Reorganization Fund (see section I.A), as part of a restructuring plan for the welded specialty steel industry. Petitioners argue that this program has directly benefited the production of SSHP.

In addition, Fagersta AB and Nyby Uddeholm AB received localization loans, described in section I.C. Avesta AB acquired these loans when it purchased Fagersta Sandvik Tube AB and Nyby Uddeholm AB in 1984. Similarly, it acquired loan guarantees to Nyby Uddeholm AB, described in section I.A, as well as R&D grants to Nyby Uddeholm AB, which are described in section I.E.

As described in section I.B of this notice, the 1984 Specialty Steel Restructuring Program included an agreement under which Avesta AB purchased 75 percent of Fagersta Sandvik Tube AB (Fagersta AB's stainless steel operations), and Uddeholm AB's shares in Nyby Uddeholm AB (its subsidiary which produced stainless steel). The result was the formation of a new company, Avesta Sandvik Tube AB. One of the conditions upon which this restructuring was contingent was the forgiveness of various government loans. The Government of Sweden forgave loans to all three companies involved in these transactions. The forgiveness of the loan to Avesta AB, a company still producing SSHP, is discussed in section I.B of this notice. We require further information on loan forgiveness, loan guarantees, localization loans, and R&D grants provided to Fagersta AB and Nyby Uddeholm AB, companies which no longer product SSHP.

After carefully reviewing the petitioners' allegations and the government and company responses, it is still not clear whether the loan forgiveness, loan guarantees, localization loans, and R&D grants are attributable to SSHP. To determine whether these benefits confer a direct or indirect benefit to the production of SSHP, we will be seeking and verifying the following information: The terms of the purchase of these companies' assets, including the value of the assets and the basis on which this value was determined (*e.g.*, the standard requirements for security, and collateral requirements on loans), and whether the purchases can be viewed as arm's-length transactions.

B. Government Funding to Certain Research Organizations

The Government of Sweden provides research and development grants to Swedish industries either directly or indirectly through various research and development (R&D) agencies. The Swedish Board for Technical Development (STU) is Sweden's central agency for funding of R&D grants. There are two research organizations in Sweden for which funding is provided by STU which benefits the SSHP industry, the Swedish Institute for Metals Research and the Foundation of Metallurgical Research.

The Swedish Institute for Metals Research is a branch research institute for the steel and non-ferrous industry. The basis and prerequisite for the activities at the Institute is a triennial agreement between private industry and STU. This agreement sets out the details of a general research program, under which the industry contributes 53 percent and the government 47 percent of the cost.

The Foundation of Metallurgical Research owns and operates two experimental plants called the Metallurgical and the Metal Working Research Plant. Approximately 60 percent of the Foundation's budget is provided by Foundation's members and 40 percent is contributed by the government through STU.

Although we determined the research funded through these research organizations not to be countervailable in *Carbon Steel*, we preliminarily determine that with respect to research conducted for the specialty steel industry, we need additional information in order to determine whether countervailable benefits are being provided. Specifically, we are seeking and will verify the availability to parties other than the members of the Institute and Foundation of all research and development project results obtained with the aid of government financing.

IV. Programs Preliminarily Determined Not To Exist

A. Working Capital Increase by Sandvik

Petitioners allege that an increase in "Interest-Free Trading Debts" shown in Sandivik's 1983 Annual Report was the result of a government transfer of interest-free loans to the company. According to the responses of the Government of Sweden and Sandvik, this increase was the result of a sale by Sandvik of one of its assets, with no participation on the part of the government. Because the responses indicate that this was a commercial transaction, unrelated to any government program or action, we preliminarily determine that there is no program by which the Government of Sweden provided interest-free loans to Sandvik.

B. Government Convertible Loan to Avesta for Purchase of Nyby Uddeholm

Petitioners allege that the Government of Sweden provided convertible loans on terms inconsistent with commercial considerations to Avesta AB for the purpose of financing the acquisition by Nyby Uddeholm AB's and Fagersta AB's stainless steel operations.

According to the responses of the Government of Sweden and Avesta AB, the government has never issued any convertible loans to Avesta AB, or any of its subsidiaries. Rather, Avesta AB issued convertible loans in 1984 to Fagersta AB and Uddeholm AB as payment for the assets of, and stock ownership held by, these two companies in Nyby Uddeholm AB and Fagersta Sandvik Tube AB. The responses of both Avesta AB and the government state that the government had no role in financing this transaction. Because the responses state that the Government of Sweden had no involvement in this part of the structural reorganization of the speciality steel industry, we preliminarily determine that there was no program by which the government provided convertible loans to Avesta.

Verification

In accordance with section 776(a) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain stainless steel hollow products from Sweden which are entered, or with drawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for each entry of this merchandise in the amount of the estimated *ad valorem* subsidy rates. The estimated net subsidy for SSHP is 1.24 percent *ad valorem* for all manufactureres, producers, or exporters in Sweden. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry 120 days after the Department makes its preliminary affirmative determination or 45 days after its final affirmative determination, whichever is latest.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on January 20, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B–099, at the above address within 10 days after publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by January 13, 1987. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355. 33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within ten days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 1, 1986.

[FR Doc. 86–27385 Filed 12–4–86; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–047]

Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 3, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on elemental sulphur from Canada. The review covers nine producers and/or exporters of this merchandise to the United States and the period December 1, 1982 through November 30, 1983.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. The final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: December 5, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or J. Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 3777–5255.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 1986 the Department of Commerce ("the Department") published in the Federal Register (51 FR 35381) the preliminary results of its administrative review of the antidumping finding on elemental sulphur from Canada (December 17, 1973, 38 FR 34655). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of elemental sulphur from Canada, currently classifiable under item 415.4500 of the Tariff Schedules of the United States Annotated.

The review covers nine producers and/or exporters of Canadian elemental

sulphur to the United States and the period December 1, 1982 through November 30, 1983.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. The final results of our review are the same as those presented in the preliminary results of review, and we determine that the following margins exist for the period December 1, 1982 through November 30, 1983:

Manufacturer/exporter	Margin (percent)
Allied Corporation	0
B.P. Resources Canada, Ltd.	5.56
Cities Service Oil and Gas Corp.	[1] 6.96
Drummond Oil & Gas Ltd.	0
Imperial Oil Limited	0.45
Koch Industries, Inc.	[1] 26.95
Mobil Oil Canada, Ltd.	[1] 5.56
Suncor Inc.	[1] 26.95
Texaco Canada, Inc. (formerly Texaco Canada Resources, Ltd.)	[1] 28.90

[1] No shipments during the period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. the Department will issue appraisement instructions directly to the Customs Service.

Further, the Department will instruct the Customs Service to collect cash deposit of estimated antidumping duties for each firm based upon above margins, as provided in section 751(a)(1) of the Tariff Act. Since the margin for Imperial Oil is less than 0.5 percent and, therefore, *de minimis*, the Department waives the estimated cash deposit requirement for this firm. For any shipments from the remaining known producers and/or exporters not covered by this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of those firms (50 FR 37889, September 18, 1985).

For any shipments from a new producer and/or exporter not covered by this or prior administrative reviews, whose first shipments of Canadian elemental sulphur occurred after November 30, 1983 and who is unrelated to any reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Canadian elmental sulphur entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a)

Dated: November 28, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-27386 Filed 12-5-86; 8:45 am]

BILLING CODE 3510-05-M

[A-475-059]

Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 24, 1985, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on pressure sensitive plastic tape from Italy. On October 3, 1986, the Department published further preliminary results of its administrative review and a tentative determination to revoke in part the antidumping finding. The review covers eight manufacturers and/or exporters of this merchandise and generally consecutive periods from February 18, 1977 through September 30, 1985.

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke in part. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the final results for certain firms from those presented in our preliminary results of review.

EFFECTIVE DATE: December 5, 1986.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney, Alfredo Montemayor, or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5505/3601.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 38698) the preliminary results of its administrative review of the antidumping finding on pressure sensitive plastic tape from Italy (42 FR 56110, October 21, 1977). On October 3, 1986, the Department published in the **Federal Register** (51 FR 35383) further preliminary results of its administrative review and a tentative determination to revoke in part that antidumping finding. The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act"). The substantive provisions of the Antidumping Act of 1921 and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980.

Scope of the Review

Imports covered by the review are shipments of pressure sensitive plastic tape measuring over 1⅜ inches in width and not exceeding 4 mils in thickness, currently classifiable under items 790.5530, 790.5545, and 790.5555 of the Tariff Schedules of the United States Annotated.

The review covers eight manufacturers and/or exporters of Italian pressure sensitive plastic tape and generally consecutive periods from February 18, 1977 through September 30, 1985.

We will not consider further Manuli's tentative revocation since we found margins in this review.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results and tentative revocation in part. We received comments from the petitioner, Minnesota Mining and Manufacturing ("3M"), and five respondents, Autoadesivitalia s.p.a ("A.I."), COMET S.A.R.A. ("COMET") Manuli Autoadesivi S.p.A. ("Manuli"), N.A.R. S.p.A. ("NAR"), and SICAD S.p.A. ("SICAD"). (We received additional comments from the respondents concerning mathematical or clerical errors. We have corrected such errors but have not addressed them specifically in this notice.)

Petitioner's Comments

Comment 1. 3M argues that the Department should not have accepted SICAD's claim for defective merchandise because SICAD did not base its claim upon differences in the physical characteristics of the merchandise, but instead upon the poor quality of U.S. tape when compared to home market tape.

Department's Position. SICAD credited its customers' accounts for some of the value of the defective merchandise. We consider the actually credited amounts to be directly related selling expenses. Therefore, in this final

determination we have adjusted foreign market value for these differences in circumstances of sale pursuant to section 353.15 of the Commerce Regulations.

Comment 2. 3M argues that A.I. incurred greater slitting and packing costs on U.S. sales than on home market sales. 3M argues that, because A.I. did not report the higher cost of U.S. slitting and packing, the Department should use the cost data from another manufacturer to make the adjustment.

Department's Position. We agree. Since A.I. failed to quantify the cost differences between the U.S. and home market tape, in this final determination we used another Italian tape manufacturer's cost data to make this adjustment, as best information available.

Comment 3. The petitioner argues that the Department should not offset A.I.'s U.S. commission expense with home market indirect selling expenses becasue they were inadequately quantified.

Department's Position. We agree. A.I. failed to identify what portion of salesmen's salaries were attributable to tape sales and what portion were attributable to other products. A.I. also used an incorrect allocation methodology (number of invoices issued) to quantify all these claimed expenses. Since A.I. did not adequately quantify the amount of these claimed indirect expenses, we disallowed them.

Comment 4. The petitioner argues that the Department should have adjusted for differences in the physical characteristics of the merchandise associated with Boston's U.S. and home market sales. 3M suggests that we use cost data from another Italian tape manufacturer, as best information available, to make the adjustment.

Department's Position. We agree. See our position on Comment 2.

Comment 5. The petitioner argues that the Department should adjust for U.S. brokerage and handling expenses for certain U.S. sales made by COMET.

Department's Position. In this final determinatin we adjusted for U.S. brokerage and handling expenses, as we did in the preliminary results of review.

Comment 6. 3M argues that the Department should adjust for COMET's greater slitting costs asociated with certain U.S. sales by using the calculated slitting cost differences between U.S. and home market merchandise shown in the verification report.

Department's Position. Having reviewed the submitted data, we agree and have changed our calculations accordingly in this final determination.

Comment 7. 3M agrues that the Department should adjust for the greater packing expense Manuli incurred on U.S. slit roll sales.

Department's Position. In this final determination we accounted for this, as we did in the preliminary results of review.

Comment 8. The petitioner argues that, since Manuli failed to submit proper non-proprietary summaries of its submissions for certain periods, the Department should reject Manuli's data and proceed with appraisements based upon the best information available.

Department's Position. Because Manuli previously failed to comply with § 353.28 of the Commerce Regulations, we stated in the final results of our last administrative review that:

> In future reviews in this case the Department will not use a submission if the company does not provide a timely non-confidential summary that fully complies with § 353.28 of the Commerce Regulations. (48 FR 35686, August 5, 1983.)

This was directed towards future submissions that would be submitted in subsequent administrative reviews. We did not intend to apply this retroactively to prior submissions that we had already accepted, analyzed, and verified. We reaffirm that we will not use proprietary information if the submitting party does not provide a timely non-proprietary summary that fully complies with section 777 of the Tariff Act. Moreover, we note that under § 353.32 of our proposed regulations, the Department will both return and not use proprietary information that is not accompanied by an adequate non-proprietary summary.

Comment 9. 3M suggests that for certain price comparisons for Manuli, we should use as best information available 3M's cost data to adjust for merchandise with different physical characteristics.

Department's Position. We did not use Manuli's data since they were inadequate. (See our position on Comment 14.) We did not use 3M's data because they reflected costs 3 to 8 years later than the period in question; additionally, they were untimely submitted. For these reasons we made no adjustment for these claimed differences.

Comment 10. 3M suggests that the Department did not adjust for the full amount of credit expenses that Manuli incurred on certain U.S. sales because the actual payment experience could very likely exceed the stated terms of payment shown in Manuli's submissions.

Department's Position. We verified that the payment experience corresponded with the payment terms and have allowed the claimed amount.

Comment 11. For certain U.S. sales, the petitioner objects to the department's comparison of jumbo rolls sold in Italy with slit rolls sold in the United States.

Department's Position. We agree that this comparison was inappropriate and have changed our calculations accordingly in this final determination.

Responents' Comments

Comment 12. Various respondents claim that the Department should have used home market sales to wholesalers in its calculation of foreign market value since they sold exclusively to wholesalers in the United States. If the Department uses home market sales to end-users, the respondents argue that they are entitled to a level-of-trade adjustment in accordance with § 353.19 of the Department's regulations.

Department's Position. For each of the respondents we used home market sales to both whoelsalers and end-users because we examined pricing patterns and found unexplained inconsistencies; that is, at times prices differed when purchased quantities were the same, and vice-versa. We are not saftisfied that these classes of purchasers were different, as claimed. Also, we have insufficient evidence of quantifiable price differences between the claimed various levels of trade.

Comment 13. Various respondents contend that in purchase price comparisons the Department should use the exchange rate in effect on the U.S. sale date, rather than that in effect on the home market sale date, as we had done in our preliminary results.

Department's Position. We agree and have changed our calculations accordingly in this final determination.

Comment 14. For certain sales Manuli claims that the Department erred in not adjusting for differences in the physical characteristics of the merchandise.

Department's Position. We disagree. Manuli did not separately identify or quantify the differences in direct labor, direct material, and direct factory overhead costs, as we require for such adjustments.

Comment 15. Manuli claims that for certain home market sales the Department should have adjusted for commissions, cash discounts, and quantity discounts.

Department's Position. We adjust for such expenses when a direct relationship between the claimed expenses and specific sales or

customers is shown. Since Manuli was unable to demonstrate such a direct relationship, we disallowed these claims.

Comment 16. Manuli contends that the Department incorrectly used exporter's sales price for certain U.S. sales for which Manuli U.S.A. acted as the importer of record.

Department's Position. We agree. Upon further review of Manuli's data, we have determined that these sales were in fact to unrelated U.S. customers prior to the dates of importation. Manuli U.S.A. merely acted as a clearing agent, facilitating Customs clearance and the delivery of the merchandise to the unrelated customers. Thus we have treated these transactions as purchase price sales.

Comment 17. Manuli contends that the quantities of tape sold are overstated for certain U.S. sales. As a result, the Department's comparisons for these sales are also distorted.

Department's Position. We agree and have corrected our calculations in this final determination using correct quantities for these sales.

Comment 18. Manuli contends that for certain sales the Department should use the same interest rate to compute credit expense for both its purchase price and foreign market value calculations.

Department's Position. We disagree. Italian currency regulations required Manuli and the other respondents in this case to periodically discount export receivables at a different interest rate than the domestic short-term borrowing rate. Manuli failed to provide its short-term rate for domestic and export borrowing. Therefore, we used the Federal Reserve Board rates for Italian short-term export borrowing and Italian short-term domestic borrowing rates, respectively, to calculate Manuli's U.S. and home market credit expenses for these sales.

Comment 19. Manuli contends that the Department did not deduct inland freight and credit expenses from certain home market sales.

Department's Position. We agree and have corrected these calculations in this final determination.

Comment 20. Manuli contends that the Department should not use exporter's sales price for certain U.S. sales since Manuli made no shipments to its U.S. warehouses during this period. Manuli also contends that the Department compared certain transactions twice through its use of both the dates of exportation and the invoice dates.

Department's Position. Although Manuli had no shipments to its U.S. warehouse during this period, there were sales from the U.S. warehouse during this period, which we consider exporter's sales price transactions. Also, we have changed our calculations to ensure that we did not compare any transactions twice.

Comment 21. Manuli contends that the Department deducted too much from the United States price for indirect selling expenses for certain U.S. sales. Specifically, we should not have deducted costs associated with the phase-out of Manuli U.S.A., since these costs were extraordinary.

Department's Position. We disagree. Since we have determined that these were indirect selling expenses, there is no authority for disregarding these expenses in our calculation of exporter's sales price, whether extraordinary or not.

Comment 22. Manuli contends that for certain U.S. sales the Department deducted too much for commissions.

Department's Position. We agree in part and have adjusted our calculations accordingly in this final determination.

Comment 23. Manuli contends that for certain home market sales the Department should have deducted the inland freight expense which it incurred in transporting the merchandise from its factory to its main warehouse.

Department's Position. We disallowed this claimed expense because Manuli did not adequately demonstrate that the merchandise had been sold prior to its transportation to Manuli's warehouse.

Comment 24. Manuli argues that for certain home market sales the Department should have included in its adjustment for home market commissions Manuli's "Staff Leaving Indemnity" and "Social Contributions Expenses," since both of these were directly related to the commission expense.

Department's Position. We agree and have changed our calculations accordingly in this final determination.

Comment 25. Manuli argues that the Department erred in offsetting home market commissions with U.S. indirect selling expenses.

Department's Position. We disagree. We offset Manuli's home market commissions with U.S. indirect selling expenses in accordance with § 353.15(c) of the Commerce Regulations.

Comment 26. Manuli argues that the Department should have allocated its returned merchandise expense over sales during a three-year period, rather than over sales during a one-year period.

Department's Position. We disagree. Since these returns were of merchandise sold during a one-year period, allocating this expense over that year is reasonable, and Manuli offered no good reason for us to consider using a longer period.

Comment 27. NAR argues that it was denied due process because it was given inadequate time to review the computer programs and output that the Department used in its calculations. NAR claims the problem was compounded by the fact that we reviewed over five years of U.S. sales.

Department's Position. Nearly three weeks before the hearing, as is our practice, we held a disclosure conference with all parties to the proceeding, gave them the computer programs and data we relied on for these results, and explained in detail the methodology we used. We consider this adequate time to review and comment on the data and our methodology. We did consider all NAR's comments in reaching these final results.

Comment 28. NAR contends that the Department should not have used the Federal Reserve Board quarterly exchange rates in its calculations, but should have used the exchange rates which NAR submitted in its October 30, 1986 submission.

Department's Position. Using the Federal Reserve Board rates of exchange is in accordance with § 353.56(a) of the Commerce Regulations.

Comment 29. NAR argues that the Department should have used a weighted-average United States price, as is permitted by section 620 of the Trade and Tariff Act of 1984. NAR claims that this would produce fairer results.

Department's Position. We disagree. Since neither the volume of U.S. sales nor the number of adjustments were significant, there is no authority under section 620 to average these sales.

Comment 30. NAR contends that the Department should use average U.S. and home market movement expenses, rather than sale-by-sale movement expenses.

Department's Position. We prefer to adjust for movement expenses on a sale-by-sale basis when, as here, such data are available, since this more accurately reflects the actual expenses incurred.

Comment 31. NAR claims that the Department should allow some portion of its claim for home market advertising as a selling expense.

Department's Position. We disallowed NAR's claimed home market advertising expense because this was trademark advertising and not directly related to any specific sales or specific products.

Comment 32. NAR argues that the Department should not have offset home market commissions with U.S. indirect

selling expenses because § 353.15(c) of the Commerce Regulations is applicable only in exporter's sales price calculations.

Department's Position. We disagree. Only the last sentence of § 353.15(c) is applicable to only exporter's sales price situations. The rest of this section is applicable in both purchase price and exporter's sales price situations. This section authorizes this adjustment.

Comment 33. NAR argues that in its preliminary results the Department overstated the amount of U.S. indirect selling expenses.

Department's Position. We agree in part and have changed our calculations accordingly in this final determination.

Comment 34. NAR argues that the Department improperly grouped merhandise in the preliminary results. NAR argues that the Department should group tan, white, and clear into one color group, yellow, green, light blue, and dark blue into another color group, and red, orange, and black into a third color group, because the prices within each group were the same. NAR argues that color differences within each group have no effect on price, and tapes within each group have essentially the same physical characteristics.

Department's Position. We do not accept the proposition that different colored tapes are identical to each other. A difference in color is a difference in physical characteristics; thus, different colored tapes are similar, not identical, regardless of any effect on price. Where applicable, we compared tape with identical physical characteristics, including color. NAR failed to demonstrate why our comparisons of tapes of the same color were unreasonable; it merely observed that using its suggested groupings would produce "fairer" results.

Comment 35. NAR claims that it is unclear how the Department calculated the number of credit days for U.S. sales.

Department's Position. We calculated the credit period for NAR's U.S. sales from the date of shipment to the date of payment.

Comment 36. NAR claims that the Department should adjust for home market movement expenses on sales for which the terms of sale were "ex-works." NAR also claims that the Department should adjust for the home market movement expenses that it incurred on certain sales to end-users.

Department's Position. Since "ex-works" is synonomous with ex-factory, and since in ex-factory sales the customer incurs any movement expenses, we are not satisfied that NAR incurred any movement expenses on these sales. The information that NAR provided on home market movement expenses incurred on certain sales to end-users was not provided in a timely fashion, since it was first submitted two weeks after the hearing. Thus for these sales we did not adjust for claimed movement expenses.

Comment 37. NAR contends that for certain home market sales the Department should include in its calculations the number of days that it takes NAR's bank to credit NAR's account after the bank receives payment from NAR's customers.

Department's Position. We agee. In our calculations of both foreign market value and U.S. price we have accounted for the appropriate number of days between receipt of payment by NAR's bank and the crediting of payment to NAR's account.

Comment 38. NAR claims that the Department did not adjust for the full amount of home market movement expenses that it incurred for sales in certain periods.

Department's Position. We agree. With the exception of NAR's "ex-works" and certain end-user sales (see Comment 36), we have revised our calculations to include the actual sale-by-sale movement expenses submitted by NAR.

Comment 39. NAR claims that the Department erroneously compared sales of large quantities in the United States with sales of smaller quantities in the home market, and that we made no adjustments for the differences in quantities.

Department's Position. Because NAR failed to quantify this claimed adjustment, we disallowed it.

Comment 40. A.I. argues that the Department should not have deducted ocean freight from U.S. sales for which A.I.'s customer bore the expense.

Department's Position. We agree and have changed our calculations accordingly in this final determination.

Comment 41. SICAD argues that the Department improperly grouped merchandise in its calculations for certain sales.

Department's Position. For SICAD's merchandise we used the same groupings as for all other reviewed firms. Because SICAD did not furnish specific information to support its general assertion of error, we are unable to address this comment further.

Comment 42. COMET argues that for certain home market sales the Department should have adjusted for commissions and inland freight expenses.

Department's Position. We disallowed these claims because COMET failed to quantify them

Final Results of the Review. As a result of the comments received, we have revised our preliminary results for A.I., BOSTON, COMET, Manuli, NAR, and SICAD and we determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
A.I.	10/01/80-9/30/81	9.22
	10/01/81-10/05/82	5.33
Boston	10/01/80-9/30/81	8.67
	10/01/80-8/30/83	[1] 8.67
COMET	10/01/80-9/30/81	6.15
	10/01/81-9/30/82	5.64
	10/01/82-9/30/83	6.07
Irplastnastri	1/16/84-6/15/84	12.66
Manuli	2/18/77-3/31/78	2.06
	4/01/78-3/31/79	1.35
	10/01/80-9/30/81	1.19
	10/01/81-9/30/82	0.03
	10/01/82-9/30/83	2.19
	10/01/83-9/30/84	0.97
	10/01/84-9/30/85	0
NAR	7/01/79-9/30/80	4.76
	10/01/80-9/30/81	2.66
	10/01/81-9/30/82	2.40
	10/01/82-9/30/83	4.61
	10/01/83-9/30/84	4.51
SICAD	10/01/80-9/30/81	4.71
	10/01/81-9/30/82	0.16
	10/01/82-9/30/83	1.65
SYROM	6/01/82-9/30/85	12.66

[1] No shipments during the period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a) of the Tariff Act, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required for these firms.

For any shipments from the remaining 17 known manufacturers and/or exporters, not covered by this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of those firms (48 FR 35686, August 5, 1983). For any shipments from a new exporter not covered in this or prior administrative reviews, whose first shipments of Italian pressure sensitive plastic tape occurred after September 30, 1985, and who is unrelated to any reviewed firm or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Italian pressure sensitive plastic tape entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1))

and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: December 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-27387 Filed 12-2-86; 8:45 am]

BILLING CODE 3510-05-M

National Oceanic and Atmospheric Administration

[P77#24]

Marine Mammals; Application for Permit: National Marine Fisheries Service, Northwest and Alaska Fisheries Center

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: National Marine Fisheries Service.

a. Northwest and Alaska Fisheries Center.

b. 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals:

California sea lion (*Zalophus californinaus*), 4025
Pacific harbor seal (*Phoca vitulina richardii*), 2745
Northern elephant seal (*Mirounga angustirostris*), 1770
Northern sea lion (*Eumetopias jubatus*), 810.

4. Type of Activity: A specified number of animals will be sacrificed, harassed during fishery interaction experiments, captured, lavaged, injected with labeled-water, instrumented, blood sampled, food aversion conditioned, handled, released and recaptured. An unspecified number of the animals will be incidentally harassed. Specimen materials will be collected and/or imported from dead animals.

5. Location of Activity: Pacific coastal and inland waters of California, Oregon, and Washington, including all offshore islands.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC.;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

Dated: December 1, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-27344 Filed 12-4-86; 8:45 am]

BILLING CODE 3510-22-M

Availability of Marine Mammal Annual Report

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of Marine Mammal Annual Report.

SUMMARY: The 1985/86 Annual Report on the administration of the Marine Mammal Protection Act in the Department of Commerce is available now, on request, from the National Marine Fisheries Service.

ADDRESS: Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz (Protected Species Division), (202) 673-5349.

SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act of 1972 assigns responsibility for marine mammals of the Order Cetacea (whales and dolphins) and the Suborder Pinnipedia (seals and sea lions), except walrus, to the Department of Commerce. This annual report reviews the progress NMFS has made to protect these animals; the permit programs for scientific research, public display, the incidental take of marine mammals in commercial fisheries, and the "small take" of marine mammals due to other activities; the marine mammal stranding networks; international activities; legal actions; and enforcement activities. It includes a discussion of the management and research programs for cetaceans and pinnipeds that are carried out at the NMFS Southeast, Southwest, Northeast, Northwest, and Alaska Regional Offices as well as its Southeast, Southwest, Northeast, and Northwest and Alaska Fisheries Centers.

Dated: December 2, 1986.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 86-27370 Filed 12-4-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

December 1, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 5, 1986. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

A CITA directive dated July 14, 1986 (51 FR 25927) established limits for certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the agreement year which began on January 1, 1986 and extends through Decmeber 31, 1986. In

consultations held under the terms of the Bilateral Cotton, Wool and Man-made Fiber Textile Agreement of February 26, 1979, as further amended and extended, the Governments of the United States and Mexico have agreed to further amend their bilateral agreement to effect the following changes:

(1) Increase the specific limit for Category 341/641 (woven cotton and man-made fiber blouses and shirts) to 615,000 dozen.

(2) Merge Categories 336 and 636 (cotton and man-made fiber dresses) at a level of 140,000 dozen and 342 and 642 (women's, girls' and infants' cotton and man-made fiber skirts) at a level of 150,000 dozen.

(3) Increase the designated consultation levels for cotton and man-made fiber textile products in Categories 338/339 (cotton knit shirts), 340 (men's and boys' woven cotton shirts), 352/652 (cotton and man-made fiber underwear), 359–0 (cotton apparel in TSUSA numbers other than 381.0822, 381.6510, 384.0928 and 384.5222), 604–A (plied acrylic yarn in TSUSA numbers 310.5049 and 310.6042) and 604–0 (all products in the category except plied acrylic yarn in TSUSA numbers 310.5049 and 310.6042). The level for women's, girls' and infants' cotton coats in Category 335 is being reduced to 40,000 dozen.

(4) Increase the limit for Category 666 (other furnishings of man-made fibers) to 4,000,000 pounds and delete the category from the limit established for Group II (Categories 310–320, 360–369, 410–429, 464–469, 610–627 and 665–670). Accordingly, the Group II limit is being reduced to 45,000,000 square yards equivalent and charges of 20,011,430 square yards equivalent, representing imports in Category 666 through November 15, 1986, are being deducted from charges to the group limit.

(5) Special shift is being applied to the sublimits within Categories 347/348 and 647/648, increasing Categories 347 and 348 each to 870,000 dozen and Categories 647 and 648 each to 960,000 dozen. (The overall limits for these combined categories are not being changed).

All of the foregoing adjustments apply to cotton and man-made fiber textile products in the indicated categories, exported during the current agreement year which began on January 1, 1986 and extends through December 31, 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

December 1, 1986.

Commissioner of Customs,
Department of the Treasury
Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of July 14, 1986 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1986.

Effective on December 5, 1986, paragraph 1 of the directive of July 14, 1986 is hereby amended to include adjusted limits for the following categories:

Category	Adjusted 12-mo level [1]
310–320, 360–369, 410–429, 464–469, 610–627, 665, 669 and 670, as a group.	45,000,000 square yards equivalent.
335	40,000 dozen.
336/636	140,000 dozen.
338/339	475,000 dozen.
340	135,000 dozen.
341/641	615,000 dozen of which on more than 225,000 dozen shall be in TSUSA numbers 384.4608, 384.4610, 384.4612, 384.9110 and 384.9120.
347/348	1,225,000 dozen of which not more than 870,000 dozen shall be in Category 347 and not more than 870,000 dozen shall be in Category 348.
352/652	1,000,000 dozen.
359–0 [2]	500,000 pounds.

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1985.
[2] In Category 359, all TSUSA numbers except 381.0822, 381.6510, 384.0928 and 384.5222

Category	Adjusted 12-mo limit [1]
604–A [2]	1,150,000 pounds.
604–O [3]	1,600,000 pounds.
647/648	1,500,000 dozen of which not more than 960,000 dozen shall be in Category 647 and not more than 960,000 dozen shall be in Category 648.
666	4,000,000 pounds.

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1985.
[2] In Category 604, only TSUSA numbers 310.5049 and 310.6042.
[3] In Category 604, all TSUSA numbers except those listed in footnote 2.

Also effective on December 5, 1986, the directive of July 14, 1986 is further amended to establish a limit of 150,000 dozen [1] for cotton textile products in Category 342, combined with Category 642 (Category 342/642).

Textile products in Category 342/642 which have been exported before January 1, 1986, shall not be subject to this directive. Charges for imports in Category 342/642 during the period, January 1, 1986 through the effective date of this directive, which have been exported on and after January 1, 1986, will be provided in a separate letter when the data become available.

Textile products in Category 342/642 which have been reelased from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–27393 Filed 12–4–86; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as further amended and extended, between the Governments of the United States and Mexico establishes import restraint limits for cotton, wool and man-made fiber textiles and textile products in Categories 310–320, 360–369, 410–429, 464–469, 610–627, 665, 667–670, as a

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1985.

group, and for individual Categories 300/301, 334, 335, 336, 337/637, 338/339, 340, 341/641, 347/348, 352/652, 359, 363, 433, 435, 443, 447, 604, 632, 633, 634, 635, 636, 638/639, 640, 647/648, 649, 651, 659 and 666, produced or manufactured in Mexico and exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987.

Accordingly, in the letter which follows this notice, the Chairman of Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products in the foregoing categories in excess of the designated twelve-month restraint limits. Polyethylene film on the spool or in cartridges in part of Category 627 (in T.S.U.S.A. numbers 389.6260 and 389.6265 only) is excluded from coverage of the group limit established under this agreement and does not require an export visa.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated—(1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

November 28, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as further amended and extended, between the Governments of the United States and Mexico; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products in the following categories, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987, in excess of the following restraint limits:

Category	12-mo. limit
300/301	8,000,000 pounds.
310-320, 360-369, 410-429, 464-469, 610-627, 665, 667-670, as a group[1].	45,000,000 square yards equivalent.
334	50,000 dozen.
335	40,000 dozen.
336/636	140,000 dozen.
337/637[2]	80,000 dozen.
338/339	400,000 dozen.
340	125,000 dozen.
341/641	651,900 dozen, of which not more than 238,500 dozen shall be in T.S.U.S.A. numbers 384.4608, .4610, .4612, .9110 and .9120.
342/642	150,000 dozen.
347/348	1,298,500 dozen of which not more than 922,200 dozen shall be in Category 347 and not more than 922,200 dozen shall be in Category 348.
352/652[3]	800,000 dozen.
359-C[4]	1,272,000 pounds.
359-O[5]	300,000 pounds.
363	5,000,000 numbers.
433	11,000 dozen.
435	14,815 dozen.
443	6,000 dozen.
447	11,000 dozen.
604-A[6]	1,000,000 pounds.
604-O[7]	1,500,000 pounds.
632	600,000 dozen pairs.
633	81,620 dozen.
634	50,000 dozen.
635	100,000 dozen.
638/639[8]	425,000 dozen.
640	200,000 dozen.
647/648	1,590,000 dozen of which not more than 1,017,600 dozen shall be in Category 647 and not more than 1,017,600 dozen shall be in Category 648.
649	1,600,000 dozen.
651	100,000 dozen.
659-C[9]	1,272,000 pounds.
659-H[10]	250,000 pounds.
659-O[11]	1,200,000 pounds.
666	3,000,000 dozen.

[1] Excluding Category 666 and polyethylene film in the spool or in cartridges in Category 627 (only T.S.U.S.A. numbers 389.6260 and 389.6265).

[2] The conversion factor into square yards equivalent shall be 23.0.

[3] The conversion factor into square yards equivalent shall be 13.5.

[4] In Category 359, only T.S.U.S.A. numbers in the category except those listed in footnote 4.

[5] In Category 359, all T.S.U.S.A. numbers 381.0822, .6510, 384.0928, and 384.5222.

[6] In Category 604, only T.S.U.S.A. numbers 310.5049 and 310.6042.

[7] In Category 604, all T.S.U.S.A. numbers in the category except those listed in footnote 6.

[8] The conversion factor into square yards equivalent shall be 15.5.

[9] In Category 659, only T.S.U.S.A. numbers 381.3325, .9805, 384.2205, .2530, .8606, 8607, and .9310.

[10] In Category 659, only T.S.U.S.A. numbers 703.0510, .0520, .0530, .0540, .0550, .0560, .1000, .1610, .1620, .1630, .1640 and .1650.

[11] In Category 659, all T.S.U.S.A. numbers in the category except those listed in footnotes 9 and 10.

In carrying out this directive, entries of cotton, wool and man-made fiber textiles and textile products in the foregoing categories, produced or manufactured in Mexico which have been exported during the period which began on January 1, 1986 and extends through December 31, 1986, shall to the extent of any unfilled balances, be charged against the limits established for such goods during that twelve-month period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of February 26, 1979, as further amended and extended, between the Governments of the United States and Mexico, which provide, in part, that: (1) Specific limits or sublimits may be exceeded by not more than five percent for swing in any agreement period with the exception of specific limits in Categories 310-320, 360-369, 410-429, 464-469, 610-625, 665 and 667-670, which may be exceeded by not more than seven percent; (2) these same limits may be adjusted for carryover and carryforward up to 11 percent of the applicable category limit or submit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), in the Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-27392 Filed 12-4-86; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of List; Exempt Textile Products From Taiwan

December 1, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 8, 1986. For further information contact Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On April 24, 1973 a notice was published in the **Federal Register** (38 FR 10132) which announced that certain items, properly certified exempt by officials in Taiwan, would be exempt from the restraint limits established pursuant to the terms of the bilateral agreement concerning cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Taiwan. During recent consultations, agreement was reached between representatives of the American Institute in Taiwan (AIT) and the Coordination Council for North American Affairs (CCNAA) to further amend the list of exempt items to include the following as item 5 of Annex C of the agreement:

Oriental Martial Arts Uniforms in TSUSA numbers 381.0830, 381.3200, 381.6300, 381.9700, 384.0950, 384.2400, 384.5000, 384.9200

It was also agreed that handbags and flat goods in TSUSA numbers 706.3400, 706.3900, 706.4140 and 706.4150 would be deleted from the list of exempt items. A complete list of items which are currently exempt from the limits of this bilateral agreement is published as an enclosure to the letter to the Commissioner of Customs which follows this notice.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 1, 1986.

Commissioner of Customs, Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on April 19, 1973 by the Chairman, Committee for the Implementation of Textile Agreements, concerning the exemption of certain textile products, produced or manufactured in Taiwan.

Effective on December 8, 1986, and until further notice, item 5 of the list of exempt items from Taiwan shall be amended to read "Oriental Martial Arts Uniforms in TSUSA numbers 381.0830, 381.3200, 381.6300, 381.9700, 384.0950, 384.2400, 384.5000, 384.9200," and item 7 (handbags and flat goods)[1] shall be deleted. A complete list of the currently exempt items is enclosed.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Annex C—Exempt Items

1. Pincushions.
2. Embroideries (needlework), of man-made fibers with designs embroidered with wool thread.
3. Handmade carpet, i.e., in which the pile was inserted or knotted by hand.
4. Christmas or Easter ornaments having a non-textile core or a non-textile structural fram and man-made fiber textile covering.
5. Oriental Martial Arts Uniforms in TSUSA numbers 381.0830, 381.3200, 381.6300, 381.9700, 384.0950, 384.2400, 384.5000, 384.9200.
6. Toy (novelty) animals, birds or insects with a plastic, wire, or other non-textile core that are covered or decorated with textile thread or fiber.
7. Traditional Chinese Caps.
8. Traditional Chinese Garments.

Jackets, three-quarter length or shorter, of woven fabrics, usually with Chinese figures in the weave but may be plain/woven otherwise figured or printed. They have a low mandarin collar, long sleeves and full frontal openings, with "frog" type closures (looped fastenings made of braid, cording, etc., used with a matching knot or toggle of the same material).

Fur or imitation fur-lined jackets, which may or may not be reversible and are otherwise identical in appearance and construction with the jackets described above.

Vests, sleeveless garments extending from the neck area to waist with or without pockets at the waist. They are otherwise identical in appearance and construction with the jackets described above.

[1] Only T.S.U.S.A. numbers 706.3400, 706.3900, 706.4140 and 706.4150.

[FR Doc. 86-27391 Filed 12-4-86; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Information Collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

ADDRESS: Persons wishing to comment on this information collection should contact Katie Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503, (202) 395-7231. Copies of the submission are available from Joseph G. Salazar, Agency Clearance Office, (202) 254-9735.

TITLE: Rules for Certain Leverage Transactions

CONTROL NUMBER: 3038—0029

ACTION: Extension

RESPONDENTS: Businesses (excluding small businesses)

ESTIMATED ANNUAL BURDEN: 1,740

ESTIMATED NUMBER OF RESPONDENTS: 3

Issued in Washington, DC, on December 1, 1986.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-27311 Filed 12-4-86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 137. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 137 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: December 1, 1986.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of Bulletin follows:

Civilian personnel per diem bulletin number 137 to the head of the Executive Departments and Establishments

Subject

Maximum per diem rates and actual expense reimbursement ceilings for Official Travel in Alaska, Hawaii, the Commonwealth of Puerto Rico and possessions of The United States by federal government civilian employees.

1. This bulletin is issued in accordance with Executive Order 12561, dated July 1, 1986, which delegates to the Secretary of Defense the authority of the President in 5 U.S. Code 5702 (a) to set maximum per diem rates and actual expense reimbursement ceilings for Federal civilian personnel traveling on official business in Alaska, Hawaii, the Commonwealth of Puerto Rico, and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates and ceilings may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 136 except for the cases identified by asterisks which rates are effective on the date of this Bulletin.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum Rate
Alaska:	
*Adak [1]	$89
Anaktuvuk Pass	140
Anchorage	122
Atqasuk	215
Barrow	144
Bethel	124
Cold Bay	120
Coldfoot	122
College	105
Cordova	113
Deadhorse	113
Dillingham	114
Dutch Harbor-Unalaska	127
Eielson AFB	105
Elmendorf	122
Fairbanks	105
Ft. Richardson	122
Ft. Wainwright	105
Juneau	109
Katmai National Park	148
Kenai	119
Ketchikan	113
King Salmon [3]	134
Kodiak	110
Kotzebue [3]	126
Murphy Dome [3]	105
Noatak	126
Nome	136
Noorvik	126
Petersburg	113
Point Hope	160
Point Lay	179
Prudhoe Bay	113
Sand Point	103
Shemya AFB [3]	30
Shungnak	126
Sitka-Mt. Edgecombe	113
Skagway	113
Spruce Cape	110
St. Mary's	100
Tanana	136
Valdez	136
Wainwright	165
Wrangell	113
*Yakutat	110
All Other Localities [3]	91
American Samoa	81
Guam M.I.	93
Hawaii:	
Hawaii, Island of:	
Hilo	59
Other	84
Oahu	98
All Other Islands	84
Johnston Atoll [2]	23
Midway Islands [1]	13
Puerto Rico:	
Bayamon:	
12-16—5-15	134
5-16—12-15	107
Carolina:	
12-16—5-15	134
5-16—12-15	107
Fajardo (Including Luquillo):	
12-16—5-15	134
5-16—12-15	107
Ft. Buchanan (Incl GSA Service Center, Guaynabo):	
12-16—5-15	134
5-16—12-15	107
Roosevelt Roads:	
12-16—5-15	134
5-16—12-15	107
Sabana Seca:	
12-16—5-15	134
5-16—12-15	107
San Juan (Including San Juan Coast Guard Units):	
12-16—5-15	134
5-16—12-15	107
All Other Localities	107
Virgin Islands of U.S.:	
12-1—4-30	156
5-1—11-30	126
Wake Island [2]	20
All Other Localities	20

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the Simone Construction, Inc. camp, a daily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, meals and incidental expenses at this facility.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 1, 1986.

[FR Doc. 86-27336 Filed 12-4-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Determination of Excess Petroleum Violation Escrow Funds

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Determination of Excess Amount of Petroleum Violation Escrowed Amounts Pursuant To the Petroleum Overcharge Distribution and Restitution Act of 1986.

SUMMARY: The Petroleum Overcharge Distribution and Restitution Act of 1986 requires the Secretary of Energy to determine the amount held in escrow that is in excess of the amount needed to make restitution to injured parties and to meet other commitments. Notice is hereby given that $134,066,670.82 of the escrowed amounts is determined to be excess funds and will be made available to state governments for use in specified energy conservation programs.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director; Office of Hearings and Appeals, United States Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252–2094 (Mann); 252–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: On October 21, 1986, the President signed into law the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99–509. Title III of that Act contains the Petroleum Overcharge Distribution and Restitution Act of 1986 (hereinafter referred to as PODRA). PODRA establishes certain procedures explained below for the disbursement of funds collected by the Department of Energy pursuant to the Emergency Petroleum Allocation Act of 1973 (hereinafter referred to as the EPAA) or the Economic Stabilization Act of 1970 (hereinafter referred to as the ESA) as restitution for actual or alleged violations of such Acts.

Generally, PODRA requires the Department of Energy, through the Office of Hearings and Appeals, to conduct proceedings under 10 CFR Part 205, Subpart V to refund moneys to persons injured by violations of the EPAA and the ESA. In addition, the Secretary of Energy must determine annually the amount of oil overcharge funds that will not be required to refund moneys to injured parties in these Subpart V proceedings and make it available to state governments for use in four energy conservation programs. PODRA, section 3003(c). The Secretary has delegated those responsibilities to the Office of Hearings and Appeals.

Notice is hereby given that based on the best currently available information, $134,066,670.82 is in excess of the amount that is estimated to be needed to make restitution to injured persons.

To arrive at that figure, a review of all accounts in which moneys covered by PODRA are deposited has been completed. Funds subject to distribution under PODRA in the current fiscal year are those funds in the DOE Deposit Fund Escrow Account derived from alleged violations of refined petroleum product or natural gas liquids regulations. PODRA, section 3002. As of September 30, 1986, the Office of Hearings and Appeals (OHA) had jurisdiction over $397,203,362.61 subject to PODRA, and the Economic Regulatory Administration (ERA) had jurisdiction over any small, remaining amount.

The Office of Hearings and Appeals has employed the following methodology to determine the amount in excess of that required for direct restitution. For each account affected by PODRA, we have determined the principal and accrued interest earned as of the end of fiscal year 1986. Keeping in mind that provision of the legislation which directs that primary consideration [be given] to assuring that at all times sufficient funds (including a reasonable reserve) are set aside for making [direct] restitution . . .," for certain major refiner proceedings where refund claims may not yet be filed, we have reserved 75 percent of the funds for direct restitution to injured persons. For proceedings in which all claims have been considered or in which no claims have been filed, no reserve is necessary. In those proceedings in which refund claims are pending, we have on a case-by-case basis examined the remaining claims, and established reserves sufficient to pay the entire amount of all claims. The amount of those reserves also includes all refunds actually made by the OHA since September 30, 1986. In those proceedings where escrowed amounts have been designated, prior to the enactment of PODRA, for disbursement to specific persons or classes of persons as indirect restitution (i.e. subjected to "second-stage" proceedings), those amounts have been excluded from the determination of "excess" amounts in accordance with section 3002(c)(3) of PODRA.

No other commitments are reflected in those reserves. In this connection, all accounting adjustments needed to reflect the Department's 1983 distribution of $200 million to the States under the Warner Amendment were made in July 1986.

The reserves for direct restitution in each case have been totaled, and the total amount of reserves is $263,136,691.79. That amount was subtracted from the total escrow account equity allocated to refined products and natural gas liquids. The remainder, $134,066,670.82, is the amount in fiscal year 1987 that is "in excess" of the amount that will be needed to make restitution to injured persons. Appendix A sets forth for each case within the jurisdiction of the Office of Hearings and Appeals the foregoing information. Appendix B reflects information supplied by the Economic Regulatory Administration regarding cases subject to PODRA under its jurisdiction.

Accordingly, $134,066,670.82 will be transferred to a separate account within the United States Treasury and made available to the states for use in four energy conservation programs in the manner prescribed by the Act.

Dated: December 1, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

BILLING CODE 6450-01-M

Appendix A

OHA Name of Case	CaseNmbr	Consent Order No.	Equity Attributable To Products	Estimated Reserve For Claimants	Available For Indirect Restitution
ALEMANY CHEVRON SERVICE CENTER	KEF-0023	999K90059Z	$3,056.50	$3,056.50	$0.00
ALLIED MATERIALS CORP & EXCEL	HEF-0200	660S00302Z	$1,129,643.79	$129,644.00	$999,999.79
AMERICAN PACIFIC INTERNATIONAL	HEF-0316	940C00112Z	$301,868.32	$0.00	$301,868.32
AMINOIL, U.S.A., INC.	HEF-0007	740V01259Y	$15,452,516.81	$15,452,516.81	$0.00
AMTEL, INC.	HEF-0027	720H00552Z	$2,308,064.80	$1,000,000.00	$1,308,064.80
ANADARKO PROD. (PANHANDLE)	BEF-0085	710V02007Y	$23,026.39	$23,026.39	$0.00
APACHE CORPORATION	HEF-0230	710V03010Z	$788,878.33	$377,063.00	$411,815.33
APCO OIL CORPORATION	HEF-0008	660S00632Y	$1,058,158.27	$529,079.00	$529,079.27
APPALACHIAN FLYING SERVICE INC	HEF-0028	432K00435Z	$37,112.35	$0.00	$37,112.35
ARAPAHO PETROLEUM, INC.	HEF-0231	710V03019Z	$275,908.65	$275,908.65	$0.00
ARKANSAS LOUISIANA GAS COMPANY	HEF-0201	641S00255Z	$2,546,081.83	$2,546,081.83	$0.00
ARKANSAS VALLEY PETROLEUM	HEF-0029	660E10655Z	$44,832.74	$44,832.74	$0.00
ARKLA CHEMICAL CORPORATION	HEF-0030	641H00364Z	$88,717.37	$18,500.00	$70,217.37
ARMOUR OIL COMPANY	HEF-0031	930H00062Z	$31,190.44	$0.00	$31,190.44
ATLANTA PETROLEUM PRODUCTION	HEF-0233	6D0V00010Z	$37,578.56	$0.00	$37,578.56
ATLANTIC RICHFIELD COMPANY	HEF-0591	RARH00001Z	$50,693,530.23	$38,020,147.67	$12,673,382.56
AYERS OIL COMPANY	HEF-0563	720H00533Z	$248,807.18	$0.00	$248,807.18
A-1 ARCO	HEF-0509	999K90042Z	$7,850.08	$0.00	$7,850.08
A. TARRICONE INC.	HEF-0177	240H00291Z	$646,945.81	$130,665.20	$516,280.61
BAK LTD.	HEF-0034	320H00043Z	$440,733.07	$440,733.07	$0.00
BAYOU STATE OIL/IDA GASOLINE	HEF-0202	641S00396Z	$753,501.05	$0.00	$753,501.05
BAYSIDE FUEL OIL DEPOT CORP.	HEF-0035	240H00440Z	$80,869.21	$0.00	$80,869.21
BEACON OIL COMPANY	HEF-0203	910S00008Z	$4,514,130.37	$2,407,872.30	$2,106,258.07
BELRIDGE OIL COMPANY	HEF-0234	940V00121Z	$543,115.02	$0.00	$543,115.02
BEN SOSBEE'S CHEVRON SERVICE	HEF-0512	999K90051Z	$12,254.46	$0.00	$12,254.46
BETTS, KEN (PINOLE,MONT.,BUBB)	HEF-0514	999K90040Z	$89,111.26	$0.00	$89,111.26
BILL PENDERGAST & SON CHEVRON	HEF-0543	999K90012Z	$12,011.20	$0.00	$12,011.20
BLEX OIL COMPANY	HEF-0038	733H02022Z	$9,328.05	$0.00	$9,328.05
BOB'S CHEVRON SERVICE	HEF-0513	999K90030Z	$12,590.39	$0.00	$12,590.39
BOSWELL OIL COMPANY	HEF-0040	533H00178Z	$180,511.73	$0.00	$180,511.73
BOX, CLOYCE K.	HEF-0041	600H00037Z	$961,592.82	$961,592.82	$0.00
BRECKENRIDGE GASOLINE COMPANY	HEF-0235	710V03020Z	$219,668.17	$0.00	$219,668.17
BUD'S EXXON SERVICE	HEF-0511	999K90038Z	$4,876.11	$0.00	$4,876.11
BUTLER PETROLEUM CORP.	HEF-0046	340H00479Z	$23,454.39	$0.00	$23,454.39
CAR WASH SERVICES	HEF-0516	999K90047Z	$8,410.62	$0.00	$8,410.62
CENTRAL OIL CO., INC.	HEF-0047	110H00300Z	$66,564.16	$0.00	$66,564.16
CHAMPLAIN OIL CO., INC.	HEF-0048	134K00121Z	$76,026.81	$0.00	$76,026.81
CHIP'S CHEVRON SERVICE	HEF-0517	999K90031Z	$23,570.89	$0.00	$23,570.89
CIBRO GASOLINE CORPORATION	HEF-0049	240H00486Z	$135,161.17	$0.00	$135,161.17
CITY SERVICE INC.	HEF-0050	810H00326Z	$418.57	$0.00	$418.57
CONLO SERVICE INC.	HEF-0053	240H00506Z	$3,145.01	$0.00	$3,145.01
CONOCO, INC.	HEF-0010	RCOA00001Y	$3,822,738.07	$1,911,369.00	$1,911,369.07
CONSUMERS OIL COMPANY	HEF-0055	930H00097Z	$228,923.88	$228,923.88	$0.00
COUGAR OIL INC.	HEF-0057	420H00284Z	$26,324.69	$0.00	$26,324.69
CP MARKETING CHEVRON CAR WASH	HEF-0519	999K90022Z	$7,547.18	$0.00	$7,547.18
CP MARKETING CHEVRON CAR WASH	HEF-0518	999K90052Z	$7,656.62	$0.00	$7,656.62
CRANSTON OIL SERVICE CO., INC.	KEF-0029	111K00123Z	$64,028.45	$64,028.45	$0.00
CROW CANYON SHELL	HEF-0520	999K90023Z	$5,706.26	$0.00	$5,706.26
CROWN CENTRAL PETROLEUM CORP.	KEF-0044	RCWA00000Z	$7,945,566.51	$5,959,174.88	$1,986,391.63
CRYSTAL OIL COMPANY	HEF-0204	641S00098Z	$1,636,019.69	$654,408.00	$981,611.69
CRYSTAL OIL COMPANY	HEF-0241	810V00249Z	$2,058.94	$0.00	$2,058.94
C.K. SMITH & COMPANY, INC.	HEF-0172	111H00028Z	$623,713.30	$623,713.30	$0.00

OHA Name of Case	CaseNmbr	Consent Order No.	Equity Attributable To Products	Estimated Reserve For Claimants	Available For Indirect Restitution
DALCO PETROLEUM INC.	HEF-0060	660T00642Z	$467,346.77	$467,346.77	$0.00
DIETRICH ORINDA SHELL	HEF-0522	999K90053Z	$4,642.45	$0.00	$4,642.45
DON SKILLING CHEVRON SERVICE	HEF-0547	999K90021Z	$20,215.30	$0.00	$20,215.30
DORCHESTER GAS CORPORATION	HEF-0559	670S00113Z	$4,603,693.20	$2,300,000.00	$2,303,693.20
DOUG MYERS CHEVRON SERVICE	HEF-0523	999K90035Z	$7,460.32	$0.00	$7,460.32
EAGLE PETROLEUM CO.	HEF-0243	710V03025Z	$193,691.16	$60,905.38	$132,785.78
EARL'S BROADMOOR TEXACO	HEF-0566	640Z00357Z	$7,543.06	$3,017.22	$4,525.84
EARTH RESOURCES CO.	HEF-0205	431S00341Z	$1,354,026.09	$434,207.75	$919,818.34
EASTERN OF NEW JERSEY, INC.	HEF-0065	240H00441Z	$372,784.72	$372,784.72	$0.00
EASTERN PETROLEUM CORP.	HEF-0066	N00H00163Z	$36,795.28	$0.00	$36,795.28
EDDY REFINING CO./KEY OIL CO.	HEF-0206	400S00203Z	$279,600.50	$0.00	$279,600.50
EDG, INC.	KEF-0003	930S00173Z	$1,712,311.43	$1,712,311.43	$0.00
ELIAS OIL COMPANY	KEF-0022	412H00105Z	$115,238.56	$115,238.56	$0.00
ELM CITY FILLING STATIONS, INC	HEF-0067	150H00126Z	$234,224.30	$234,224.30	$0.00
EMPIRE GAS CORPORATION	KEF-0048	720T00521Z	$976,371.88	$976,371.88	$0.00
EVETT OIL COMPANY	KEF-0020	400H00221Z	$65,595.99	$65,595.99	$0.00
E.B. LYNN OIL COMPANY	HEF-0064	320H00326Z	$46,927.95	$629.00	$46,298.95
E.M. BAILEY DISTRIBUTING CO.	HEF-0033	433H00476Z	$12,245.36	$0.00	$12,245.36
FARSTAD OIL COMPANY	HEF-0567	850H00018Z	$84,122.74	$33,649.10	$50,473.64
FERRELL COMPANIES, INC.	HEF-0587	710T00075Z	$114,466.37	$45,778.00	$68,688.37
FIELD OIL CO., INC.	HEF-0071	810H00312Z	$6,589.74	$0.00	$6,589.74
FINE PETROLEUM CO. INC.	HEF-0072	460H00072Z	$48,486.78	$0.00	$48,486.78
FRANKS PETROLEUM INC.	HEF-0208	641S00421Z	$183,838.94	$0.00	$183,838.94
F.O. FLETCHER, INC.	HEF-0074	010H00034Z	$160,271.86	$0.00	$160,271.86
GARY ENERGY CORPORATION	HEF-0245	810V00003Z	$551,210.97	$551,210.97	$0.00
GAS SYSTEMS INC.	HEF-0246	6D0V00013Z	$75,046.91	$0.00	$75,046.91
GCO MINERALS COMPANY	HEF-0570	NGCP00001Z	$998,487.72	$250,000.00	$748,487.72
GENERAL EQUITIES, INC.	HEF-0078	110H00527Z	$130,985.23	$0.00	$130,985.23
GEORGE'S CIRCLE SERVICE	HEF-0525	999K90006Z	$1,249.11	$0.00	$1,249.11
GETTY OIL COMPANY	HEF-0209	RGEA00001Z	$48,418,826.10	$36,314,120.00	$12,104,706.10
GIBBS INDUSTRIES, INC.	HEF-0079	110H00494Z	$67,123.59	$67,123.59	$0.00
GLASER GAS INC.	HEF-0080	810E00015Z	$18,782.96	$0.00	$18,782.96
GLOVER, LAWRENCE H.	HEF-0081	270T00071Z	$89,123.16	$0.00	$89,123.16
GOOD HOPE REFINERIES INC.	HEF-0211	150S00154Z	$2,180,791.01	$221,999.00	$1,958,792.01
GOODMAN OIL COMPANY	HEF-0082	000H00411Z	$15,542.66	$0.00	$15,542.66
GRAPEVINE SHELL	HEF-0526	999K90011Z	$19,405.10	$0.00	$19,405.10
GRAPEVINE TEXACO	HEF-0527	999K90043Z	$18,786.21	$0.00	$18,786.21
GULF OIL CORPORATION	HEF-0590	RGFA00001Z	$46,749,523.02	$35,062,142.27	$11,687,380.75
GULF OIL CORP.	DFF-0001	NOOR00007Y	$38,050,624.84	$33,000,000.00	$5,050,624.84
GULL INDUSTRIES, INC.	HEF-0086	010H00056Z	$257,443.70	$257,443.70	$0.00
GULL INDUSTRIES, INC.	HEF-0084	010H00357Z	$84,087.48	$84,087.48	$0.00
GULL INDUSTRIES, INC.	HEF-0085	N00SD0001Z	$1,296,827.41	$972,620.56	$324,206.85
HAL ABEL'S CHEVRON	HEF-0510	999K90005Z	$9,192.85	$0.00	$9,192.85
HAMILTON BROTHERS PETROLEUM CO	HEF-0249	710V03026Z	$414,052.85	$0.00	$414,052.85
HARV'S SACRAMENTO CAR WASH	HEF-0528	999K90049Z	$4,990.30	$0.00	$4,990.30
HICKS OIL & HICKS GAS CO, INC.	HEF-0091	570E00128Z	$86,583.31	$34,633.00	$51,950.31
HOWARD DEROUEN SHELL	HEF-0521	999K90034Z	$6,846.93	$0.00	$6,846.93
HOWARD OIL COMPANY	KEF-0008	240H00280Z	$17,796,789.56	$13,347,592.17	$4,449,197.39
HOWELL OIL CORP. / QUINTANA	HEF-0212	610S00068Z	$3,640,654.49	$1,456,262.00	$2,184,392.49
HUNT INDUSTRIES	HEF-0253	710V03006Z	$104,155.19	$0.00	$104,155.19
HUSKY OIL COMPANY OF DELAWARE	HEF-0213	B20S00007Z	$648,031.70	$324,016.00	$324,015.70
H.C. LEWIS OIL CO.	HEF-0115	340H00493Z	$69,419.49	$42,645.00	$26,774.49

OHA Name of Case	CaseNmbr	Consent Order No.	Equity Attributable To Products	Estimated Reserve For Claimants	Available For Indirect Restitution
IDEAL GAS CO., INC.	HEF-0093	021T00012Z	$78,879.64	$0.00	$78,879.64
INDIAN OIL CO., INC.	HEF-0095	132H00243Z	$54,630.17	$0.00	$54,630.17
INLAND USA, INC.	HEF-0096	720H00563Z	$636,827.60	$318,414.00	$318,413.60
INMAN OIL CO.	HEF-0097	720H00557Z	$25,281.43	$16,247.00	$9,034.43
JAY OIL COMPANY	HEF-0101	6C1H00209Z	$57,866.10	$57,866.10	$0.00
JERRY BULLARD CHEVRON	HEF-0515	999K90024Z	$37,809.51	$0.00	$37,809.51
JERRY'S SHELL SERVICE	HEF-0530	999K90015Z	$5,361.70	$0.00	$5,361.70
JIMMY'S GAS STATIONS, INC.	HEF-0102	132H00170Z	$11,113.50	$0.00	$11,113.50
JIM'S TEXACO SERVICE	HEF-0531	999K90044Z	$244.11	$0.00	$244.11
KELLER OIL COMPANY, INC.	HEF-0103	720H00598Z	$47,814.52	$47,814.52	$0.00
KENT OIL & TRADING COMPANY	HEF-0578	940X00232Z	$73,954.44	$73,954.44	$0.00
KEN'S CHEVRON STATION	HEF-0532	999K90027Z	$13,868.68	$0.00	$13,868.68
KEY OIL COMPANY	HEF-0106	430H00477Z	$95,757.34	$38,302.94	$57,454.40
KEY OIL CO., INC.	HEF-0105	420H00271Z	$120,675.32	$0.00	$120,675.32
KIESEL COMPANY	HEF-0107	720H00569Z	$6,717.94	$0.00	$6,717.94
KIM'S MOBIL	HEF-0533	999K90008Z	$4,379.69	$0.00	$4,379.69
KING & KING ENTERPRISES	HEF-0108	710H02500Z	$135,152.28	$53,384.80	$81,767.48
L & L OIL CO., INC.	HEF-0111	640H00360Z	$7,904.84	$0.00	$7,904.84
LA GLORIA OIL AND GAS CO.	HEF-0210	641S00234Z	$1,137,178.24	$852,883.68	$284,294.56
LAKES GAS CO., INC.	HEF-0112	510E00134Z	$10,956.12	$4,382.00	$6,574.12
LAZAR SUPER SHELL	HEF-0535	999K90048Z	$2,101.91	$0.00	$2,101.91
LEATHERS OIL CO., INC.	HEF-0113	000H00426Z	$15,863.79	$15,863.79	$0.00
LEE GARRETT CHEVRON	KEF-0040	999K90057Z	$6,582.77	$6,582.77	$0.00
LEE KREGER'S CHEVRON	HEF-0534	999K90009Z	$3,753.49	$0.00	$3,753.49
LEESE OIL COMPANY	HEF-0583	000H00410Z	$27,064.03	$0.00	$27,064.03
LEONARD E. BELCHER, INC.	HEF-0586	151H00003Z	$455,523.85	$4,000.00	$451,523.85
LEO'S WINSTEAD'S INC.	HEF-0114	710H01376Z	$125,974.41	$57,301.00	$68,673.41
LEWTEX OIL & GAS CORP.	BEF-0033	6D0V00020Y	$473,473.56	$380,000.00	$93,473.56
LINCOLN LAND OIL CO.	HEF-0116	720H00573Z	$19,067.41	$0.00	$19,067.41
LITTLE AMERICA REFINING CO.	HEF-0215	830S00012Z	$880,522.16	$29,029.00	$851,493.16
LOCKHEED AIR TERMINAL INC.	HEF-0117	930H00199Z	$568,167.54	$568,167.54	$0.00
LOMBARD CHEVRON SERVICE	HEF-0536	999K90017Z	$3,486.26	$0.00	$3,486.26
LOWE OIL COMPANY	HEF-0118	710H01379Z	$81,852.06	$61,389.00	$20,463.06
LUCIA LODGE ARCO	HEF-0119	910K00133Z	$31,428.75	$12,571.50	$18,857.25
LUKE BROTHERS INC.	HEF-0120	660E00075Z	$15,430.79	$6,172.32	$9,258.47
MACMILLAN RING-FREE OIL CO.	HEF-0506	960S00053Z	$1,022,993.85	$130,315.26	$892,678.59
MALCO INDUSTRIES INC.	HEF-0121	530H00435Z	$97,282.16	$10,120.22	$87,161.94
MAPCO, INC.	HEF-0258	740V01246Z	$1,339,657.58	$229,214.16	$1,110,443.42
MARATHON PETROLEUM COMPANY	KEF-0021	RMNA00001Z	$12,570,114.48	$9,427,585.86	$3,142,528.62
MARINA CHEVRON SERVICE CENTER	HEF-0537	999K90020Z	$3,922.88	$0.00	$3,922.88
MARINE PETROLEUM / MARS OIL	HEF-0122	720H00567Z	$323,893.69	$220,991.81	$102,901.88
MARION CORPORATION	HEF-0216	421S00117Z	$13,300.60	$0.00	$13,300.60
MARLEN L. KNUTSON DIST. INC.	HEF-0110	000H00422Z	$41,428.50	$41,428.50	$0.00
MARTIN OIL COMPANY	HEF-0124	910T00120Z	$257,001.34	$102,800.54	$154,200.80
MARTIN OIL SERVICE, INC.	HEF-0123	570H00200Z	$371,182.24	$100,000.00	$271,182.24
MCCARTY OIL CO.	HEF-0126	530H00438Z	$29,249.94	$0.00	$29,249.94
MCCLEARY OIL CO., INC.	HEF-0127	310H00439Z	$111,617.09	$44,646.84	$66,970.25
MCCLURE OIL COMPANY	KEF-0009	660E00083Z	$38,929.08	$15,571.63	$23,357.45
MCCLURE'S SERVICE STATION	HEF-0128	340H00486Z	$5,024.95	$2,009.98	$3,014.97
MIDWAY OIL CO.	HEF-0129	570H00057Z	$50,909.56	$0.00	$50,909.56
MIDWEST INDUSTRIAL FUELS, INC.	HEF-0130	520H00063Z	$30.28	$0.00	$30.28
MISSOURI TERMINAL OIL CO.	HEF-0131	720H00562Z	$47,976.62	$11,994.16	$35,982.46

OHA Name of Case	CaseNmbr	Consent Order No.	Equity Attributable To Products	Estimated Reserve For Claimants	Available For Indirect Restitution
MOBIL OIL CORPORATION	HEF-0508	RMOA00001Z	$32,372,748.16	$19,000,000.00	$13,372,748.16
MOORE TERMINAL AND BARGE CO.	HEF-0132	641H00052Z	$88,457.82	$0.00	$88,457.82
MOUNTAIN FUEL SUPPLY COMPANY	HEF-0263	710V03003Z	$1,848,120.55	$0.00	$1,848,120.55
MOWRY CHEVRON	HEF-0538	999K90025Z	$22,055.66	$0.00	$22,055.66
MOYLE PETROLEUM CO.	HEF-0133	810H00300Z	$18,570.28	$570.00	$18,000.28
MUSTANG FUEL CORPORATION	HEF-0011	710V03023Y	$6,314,001.08	$0.00	$6,314,001.08
NATIONAL PROPANE CORP.	HEF-0135	270T00002Z	$41,578.19	$16,631.28	$24,946.91
NAVAJO REFINING COMPANY	HEF-0217	672S00136Z	$781,152.00	$80,106.26	$701,045.74
NELSON'S SERVICE CENTER, INC.	HEF-0539	999K90050Z	$23,549.14	$0.00	$23,549.14
NIELSEN OIL & PROPANE, INC.	HEF-0136	733H02005Z	$28,066.84	$0.00	$28,066.84
NORTHEAST PETROLEUM INDUSTRIES	HEF-0137	110H00334Z	$568,808.73	$568,808.73	$0.00
NORTHEAST PETROLEUM INDUSTRIES	HEF-0580	6C0X00241Z	$1,542,328.87	$1,542,328.87	$0.00
NORTHEAST PETROLEUM, INC.	HEF-0138	120H00491Z	$1,698,011.33	$679,200.53	$1,018,810.80
NORTHWEST PIPELINE CORP.	HEF-0264	710V03015Z	$723,176.51	$723,176.51	$0.00
OCEANA TERMINAL CORP., ET AL	HEF-0142	240H00361Z	$506,712.56	$202,685.02	$304,027.54
ONEOK, INC.	HEF-0571	740V01406Z	$2,110,869.89	$1,000,000.00	$1,110,869.89
O'CONNELL OIL CO.	HEF-0141	110H00513Z	$17,045.21	$6,818.08	$10,227.13
PACER OIL CO. OF FLORIDA, INC.	HEF-0143	412H00172Z	$55,659.89	$22,263.96	$33,395.93
PACIFIC NORTHERN OIL	HEF-0144	010H00028Z	$37,026.74	$30,035.43	$6,991.31
PACIFICA SHELL & MANOR SHELL	HEF-0540	999K90033Z	$6,402.52	$0.00	$6,402.52
PANHANDLE EASTERN (CENTURY)	BEF-0041	710V02006Y	$384,363.67	$60,000.00	$324,363.67
PARADE COMPANY	HEF-0493	733V02035Z	$1,047,007.26	$0.00	$1,047,007.26
PARKTOWN CHEVRON	HEF-0541	999K90028Z	$45,405.07	$0.00	$45,405.07
PARMAN OIL CORPORATION	HEF-0145	430H00219Z	$88,940.12	$35,576.05	$53,364.07
PASCO PETROLEUM CO., INC.	HEF-0146	000H00442Z	$186,830.23	$78,314.00	$108,516.23
PAUL PROVOST CHEVRON	HEF-0542	999K90041Z	$5,856.93	$0.00	$5,856.93
PEDERSEN OIL, INC.	HEF-0147	000H00418Z	$14,239.29	$14,239.29	$0.00
PERTA OIL MARKETING CORP.	HEF-0148	930H00088Z	$212,185.99	$212,185.98	$0.01
PETERSON PETROLEUM INC.	HEF-0149	240H00491Z	$55,682.60	$13,149.24	$42,533.36
PETROLANE-LOMITA GASOLINE CO.	HEF-0269	940V00195Z	$3,998,053.68	$65,745.30	$3,932,308.38
PETROLEUM HEAT & POWER CO, INC	HEF-0150	110H00530Z	$668,284.89	$334,142.45	$334,142.44
PETROLEUM SALES/SERVICE INC.	HEF-0151	340H00488Z	$95,020.35	$14,253.05	$80,767.30
PETRO-LEWIS CORP.	HEF-0267	840V00200Z	$5,927,177.50	$0.00	$5,927,177.50
PLACID OIL COMPANY	KEF-0007	6D0S00005Z	$1,741,500.59	$1,741,500.59	$0.00
PLAQUEMINES OIL SALES CORP.	KEF-0039	640H00174Z	$605,786.71	$605,786.71	$0.00
PLATEAU, INC.	HEF-0272	733V02013Z	$235,367.32	$26,938.38	$208,428.94
POINT LANDING INC.	HEF-0152	640H00175Z	$160,394.93	$116,826.52	$43,568.41
PORT OIL COMPANY INC.	HEF-0153	420H00278Z	$30,500.26	$6,100.05	$24,400.21
POST PETROLEUM CO.	HEF-0154	910H00145Z	$17,552.77	$2,564.48	$14,988.29
POWER PAK CO., INC.	HEF-0155	610H10452Z	$108,380.60	$108,380.60	$0.00
POWER TEST PETROLEUM DIST.	KEF-0042	240H00499Z	$417,644.14	$417,644.14	$0.00
PRIDE REFINING, INC.	HEF-0218	6D0S00036Z	$657,919.48	$263,168.00	$394,751.48
PRONTO GAS CO.	HEF-0273	6D0V00024Z	$23,910.80	$0.00	$23,910.80
PROPANE GAS & APPLIANCE CO.	HEF-0156	420E00206Z	$61,961.15	$12,392.23	$49,568.92
PYROFAX GAS CORPORATION	HEF-0157	641T00099Z	$4,551,613.67	$3,493,404.00	$1,058,209.67
QUAKER STATE OIL REFINING CORP	HEF-0219	340S00352Z	$6,236,236.85	$2,494,495.00	$3,741,741.85
QUARLES PETROLEUM, INC.	HEF-0158	N00H00905Z	$50,687.41	$12,671.85	$38,015.56
RAMOS OIL CO., INC.	HEF-0159	910H00144Z	$25,637.75	$10,254.96	$15,382.79
RED TRIANGLE OIL CO.	HEF-0162	910H00112Z	$36,051.62	$0.00	$36,051.62
RESOURCES EXTRACTION & PROCESS	HEF-0574	740V01409Z	$147,774.08	$147,774.08	$0.00
REYNOLDS OIL CO.	HEF-0164	810H00324Z	$4,521.81	$1,808.72	$2,713.09
RICHARDSON AYERS JOBBER, INC.	HEF-0166	640H00354Z	$165,448.75	$16,544.87	$148,903.88

OHA Name of Case	CaseNmbr	Consent Order No.	Equity Attributable To Products	Estimated Reserve For Claimants	Available For Indirect Restitution
RIVERSIDE OIL, INC.	HEF-0494	550H00330Z	$25,008.74	$0.00	$25,008.74
ROBERT J. HEALD SHELL	HEF-0529	999K90016Z	$1,250.28	$0.00	$1,250.28
R.V. WHITNER THERMOGAS CO.	HEF-0178	530E00176Z	$89,348.70	$0.00	$89,348.70
SABER ENERGY, INC.	HEF-0220	6D0S00037Z	$1,237,641.91	$1,237,641.91	$0.00
SANESCO OIL CO.	HEF-0170	930H00306Z	$81,274.49	$0.00	$81,274.49
SANTA MARIA CHEVRON	HEF-0544	999K90039Z	$12,163.88	$0.00	$12,163.88
SAUVAGE GAS COMPANY, INC.	KEF-0024	710H06008Z	$418,130.25	$418,130.25	$0.00
SHARON HEIGHTS SHELL	HEF-0545	999K90019Z	$1,380.74	$0.00	$1,380.74
SHELTER CREEK CHEVRON	HEF-0546	999K90014Z	$9,482.12	$0.00	$9,482.12
SID RICHARDSON CARBON & GAS	BEF-0022	6D0V00025Y	$813,717.48	$813,717.48	$0.00
SIGMOR CORPORATION	HEF-0581	6D0S00091Z	$754,109.19	$41,836.00	$712,273.19
SOUTH HAMPTON REFINING	HEF-0222	6E0S00002Z	$556,348.08	$147,202.21	$409,145.87
SOUTHERN UNION COMPANY	HEF-0223	673S00336Z	$317,164.14	$200,000.00	$117,164.14
STEVE HORNER CHEVRON SERVICE	HEF-0549	999K90046Z	$4,327.85	$0.00	$4,327.85
STINNES INTER OIL INC.	HEF-0174	240H00519Z	$656,302.99	$124,258.30	$532,044.69
ST. JAMES RESOURCES CORP	HEF-0100	110H00487Z	$362,011.91	$85,103.01	$276,908.90
SUBURBAN PROPANE GAS CORP.	KEF-0038	733V02010Z	$1,854,773.78	$1,854,773.78	$0.00
SUDS MACHINE CHEVRON CAR WASH	HEF-0551	999K90013Z	$31,101.73	$0.00	$31,101.73
SWIFTY OIL COMPANY INC.	HEF-0175	550H00337Z	$68,148.94	$0.00	$68,148.94
TENNECO OIL COMPANY	BEF-0073	RTNA00001Y	$771,524.49	$200,000.00	$571,524.49
TERRY MCGOVERN'S SHELL	HEF-0552	999K90018Z	$7,850.56	$0.00	$7,850.56
TEXAS GAS & EXPLORATION	HEF-0274	6E0V00015Z	$288,779.46	$23,063.38	$265,716.08
THORNTON OIL CORPORATION	HEF-0497	533H00309Z	$400,481.75	$0.00	$400,481.75
THRIFTYMAN, INC.	KEF-0018	610H10449Z	$143,700.92	$143,700.92	$0.00
TIGER OIL CO.	HEF-0180	000H00428Z	$3,306.55	$0.00	$3,306.55
TIPPERARY CORP.	HEF-0277	670V00323Z	$619,922.90	$0.00	$619,922.90
TOTAL PETROLEUM, INC	KEF-0133	540S00227Z	$3,021,304.77	$2,265,978.58	$755,326.19
TRESLER OIL COMPANY	KEF-0019	530H00449Z	$160,037.29	$160,037.29	$0.00
TRUE COMPANIES, THE	HEF-0557	733V02019Z	$1,471,500.86	$1,471,500.86	$0.00
UNION PARK SERVICE	HEF-0553	999K90026Z	$11,781.18	$0.00	$11,781.18
UNION TEXAS PETROLEUM CORP	HEF-0009	6E0S00075Y	$637,677.31	$258,547.00	$379,130.31
UNION TEXAS PETROLEUM CORP.	HEF-0224	6E0S00023Z	$810,824.56	$0.00	$810,824.56
UPG, INC.	KEF-0026	641S00123Z	$473,786.79	$473,786.79	$0.00
U.S. OIL COMPANY	HEF-0185	570H00207Z	$79,441.03	$0.00	$79,441.03
U.S.A. PETROLEUM, INC.	HEF-0500	960S00093Z	$1,370,835.16	$75,000.00	$1,295,835.16
VALE VISTA CHEVRON SERVICE	HEF-0554	999K90037Z	$3,090.49	$0.00	$3,090.49
WALLACE & WALLACE FUEL OIL CO	HEF-0190	240H00399Z	$20,467.72	$0.00	$20,467.72
WALT FREEMAN CHEVRON	HEF-0524	999K90007Z	$6,829.88	$0.00	$6,829.88
WALT'S DANVILLE CHEVRON INC	HEF-0555	999K90010Z	$10,316.60	$0.00	$10,316.60
WELLEN OIL, INC.	HEF-0584	240H00071Z	$77,304.59	$30,922.00	$46,382.59
WILLIS DISTRIBUTING COMPANY	HEF-0197	340H00480Z	$90,689.62	$0.00	$90,689.62
WINSTON REFINING COMPANY	HEF-0589	6D0S00006Z	$124,804.44	$124,804.44	$0.00
WITCO CHEMICAL CORPORATION	HEF-0227	240S00054Z	$7,417,946.64	$3,000,000.00	$4,417,946.64
WORLD OIL COMPANY	KEF-0005	960S00104Z	$2,256,903.69	$2,256,903.69	$0.00
YE OLDE PUMP HOUSE	HEF-0556	999K90029Z	$11,468.58	$0.00	$11,468.58
ZIA FUELS (G.G.C CORP.)	HEF-0076	673H00344Z	$29,465.38	$0.00	$29,465.38
TOTALS			$397,203,362.61	$263,136,691.79	$134,066,670.82

BILLING CODE 6450-01-C

Appendix B

November 25, 1986.

Memorandum for George B. Breznay, Director, Office of Hearings and Appeals
From: Marshall A. Staunton, Administrator, Economic Regulatory Administration
Subject: ERA Input for the PODRA Section 3003(c) report

We have completed our review of the funds held in escrow as of September 30, 1986, which had not been petitioned under Subpart V. The purpose of this review was to identify the amount held in escrow that is in excess of the amount that will be needed to make restitution to persons or classes of persons in accordance with Section 3003 (b)(1) of the Petroleum Overcharge Distribution and Restitution Act of 1986. Once the required payment into an escrow account is completed, a Subpart V petition is filed with your office. Thus, payment into the escrow accounts that we examined has not yet been completed. Many of these cases are in bankruptcy or have been referred to the Department of Justice for enforcement. Since the extent of possible claims and amounts that will be available to satisfy the claims are not known at this time, it would not be prudent to consider any of these funds excess as described above.

[FR Doc. 86-27324 Filed 12-4-86; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180710; FRL-3124-5]

Receipt of Application for an Emergency Exemption From Wyoming To Use Strychnine; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt.

SUMMARY: EPA has received a public health exemption request from the Wyoming Department of Agriculture (hereafter referred to as "Applicant") to use strychnine alkaloid (CAS 57-24-0) in egg baits for control of rabid skunks. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making the decision whether to grant the exemption.

DATE: Comments must be received on or before December 22, 1986.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP- 180710" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Jack E. Housenger, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 716C, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION. Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State or Federal agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a public health exemption for the use of strychnine in eggs to control rabid skunks. Wyoming was granted a similar exemption for this use last year. Emergency exemptions for this use have been authorized to Wyoming and/or Montana for the past 12 years.

In 1972, EPA cancelled the registrations of strychnine products used for predator control, including the use of strychnine to control skunks (37 FR 5718). This public health exemption request is therefore subject to FPA's Subpart D regulations, 40 CFR 164.130 to 164.133, in addition to the regulations at 40 CFR Part 166 governing the issuance of exemptions under section 18. Subpart D provides that any application for a registration or a pesticide use that has been cancelled shall be considered a petition for reconsideration of the prior cancellation order. The Administrator will determine that reconsideration is warranted if he finds that:

(1) The Applicant has presented substantial new evidence which may materially affect the prior cancellation or suspension order and which was not available to the Administrator at the time he made his final cancellation or suspension determination; and

(2) Such evidence could not, through the exercise of due diligence, have been discovered by the parties to the cancellation or suspension proceeding prior to the issuance of the final order. (40 CFR 164.131(a).)

Ordinarily, if the Administrator finds that the substantial new evidence test in 40 CFR 164.131 is met, the Subpart D rules require a formal hearing to determine whether a modification of the cancellation order is justified (40 CFR 164.131(c)).

The Administrator has previously determined that substantial new evidence does exist in connection with the registration request and last year's emergency exemption request, as published in the **Federal Register** of June 13, 1986 (51 FR 21617). Accordingly, a hearing to reconsider whether to modify the prior cancellation order to permit the use of strychnine for controlling skunks to suppress rabies in areas where rabid animals have been found was held on October 7, 1986, as announced in the **Federal Register** of August 8, 1986 (51 FR 28623). Currently, the question of whether or not a field hearing will be held is being decided. The date on which an Initial Decision will be made by the Administrative Law Judge is January 13, 1987, unless a time extension is requested and approved.

The Agency would consider issuing another emergency exemption for this use of strychnine if by the expiration date of the current emergency exemption (November 6, 1986), strychnine has not been registered for this use, the criteria in § 164.133 are met, an emergency condition is determined to exist, and the States have met their commitment to generate section 3 data in a timely fashion (51 FR 21622).

The Applicant has applied, under section 3 of FIFRA, for registration of strychnine in egg baits to control rabid skunks. The Applicant in conjunction with the State of Montana is currently generating the data necessary to support the registration of this use of strychnine.

The Applicant has requested the use of strychnine for the purpose of suppressing local populations of skunks, the main carrier of rabies, thereby reducing the opportunity for exposure of humans, domestic animals, and susceptible wild species to rabies. The

Applicant considers the incidence of rabies to be at a level which poses an unacceptable threat to public health.

The proposed control program involves use of strychnine egg baits which contain 0.035 gram of actual strychnine alkaloid.

Placement of strychnine treated eggs is limited to land within a 5-mile radius of a site where a laboratory-confirmed rabid skunk has been found. The number of strychnine egg baits may not exceed: 1,200 eggs in any treatment area, 150 eggs per any square mile, or two eggs per site. Strychnine egg baits will be placed in such skunk habitats as follows: skunk dens, holes, garbage dumps, road culverts, junk piles, and under non-occupied buildings. All strychnine egg baits will be stamped with the word "poison" in three locations and will contain green food coloring to warn people of their toxic nature. Baits will be covered at all times and checked no less than once a week. Warning signs will be posted at all points commonly used for access to the treatment area. Strychnine egg baits will be placed only on lands where written permission has been obtained from the landowner. Placement or removal of strychnine eggs baits will be under the direct supervision of certified commercial applicators of restricted use pesticides.

The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application that proposes use of a pesticide if such pesticide was the subject of a notice under section 6(b) of FIFRA and was subsequently cancelled and is intended for a use that poses a risk similar to the risk posed by the pesticide which was the subject of the notice. The regulations also provide for the opportunity for public comment.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue this public health exemption.

Dated: November 25, 1986.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-27339 Filed 12-4-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3124-2]

Environmental Impact Statements; Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075, EPA.

Availability of Environmental Impact Statements Filed November 24, 1986 Through November 28, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860490, Draft, SCS, KS, Wolf River Watershed Protection and Flood Prevention Plan, Brown, Doniphan, and Atchison Counties, Due: January 19, 1987, Contact: James Habiger (913) 823-4565.

EIS No. 860491, Final, AFS, IL, Shawnee National Forest, Land and Resource Management Plan, Due: January 5, 1987, Contact: Kenneth Henderson (618) 253-7114.

EIS No. 860492, Final, COE, ID, Salmon River Flood Damage Reductioin Study, Construction, Lemhi County, Due: January 5, 1987, Contact: Witt Anderson (509) 522-6626.

EIS No. 860493, Draft, IBR, ID, Minidoka Project, North Side Pumping Division Extension, Agricultural Irrigation and Wildlife Habitat Improvements, Minidoka and Jerome Counties, Due: February 25, 1987, Contact: John Woodworth (208) 334-1207.

EIS No. 860494, Draft, UAF, MA, Westover Air Force Base, Air Force Reserve Mission Change and Civil Aviation Operation Expansion through 1995, Hampden and Hampshire Counties, Due: January 23, 1987, Contact: Grady Maraman (912) 926-5569.

EIS No. 860495, Draft, FHW, MD, Beaver Dam Road Widening and Extension, Beaver Court to Pandonia Road, Baltimore County, Due: January 19, 1987, Contact: Edward Terry, Jr. (301) 962-4010.

EIS No. 860496, Draft, DOE, CA, OR, WA, Third 500 kV AC Intertie Transmission Path Project, Telsa Substation, CA to southern Oregon, Los Banos Substation to Gates Substation and Pacific Northwest Facility Reinforcements, C/O/M, Due: February 3, 1987, Contact: Nancy Weintraub (916) 978-4460.

Dated: December 2, 1986.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 86-27377 Filed 12-4-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3124-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 17, 1986 through November 21, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. DS-AFS-L61141-00, Rating EC2, Pacific Northwest Regional Guide, Northern Spotted Owl Habitat Mgmt. Stds. and Guidelines, Updated and Additional Research, OR, WA, and CA. SUMMARY: EPA was concerned that water quality and fish habitat impacts due to increased harvest intensity outside of Spottted Owl Habitat Areas had not been properly evaluated. EPA also recommended that socioeconomic impacts be analyzed in comparison to existing, rather than "allowable", timber harvest levels so that the costs of protecting spotted owl habitat are not overstated.

ERP No. D-COE-J28013-WY, Rating EO2, Deer Creek Dam and Reservoir Municipal Water Supply Project, Construction, 404 Permit and Right-of-Way Permit, N. Platte River, WY. SUMMARY: EPA requested an agricultural water conservation alternative be included in the final EIS. This alternative has the potential to meet Casper's water supply needs without requiring land retirement.

ERP No. DS-FHW-F40146-00, Rating LO, US 10 Improvement, St. Croix River Bridge Replacement, MN-61 to WI-29 and WI-10, MN and WI. SUMMARY: EPA has no objection to the proposed activity. EPA noted that the scheduling of the proposed archeologicial field investigations should allow for recovery of unexpected artifacts.

ERP No. D-FHW-K40156-CA, Rating EC2, I-680/CA-24 Interchange Reconstruction and Freeway Improvements, Rudyear Road in Walnut Creek to Willow Pass Rd. in Pleasant Hill/Concord, 404 Permit, CA. SUMMARY: EPA expressed concerns of possible air and water quality impacts, and requested that the final EIS more fully discuss the issue.

Final EISs

ERP No. F-AFS-F65016-MI, Ottawa Nat'l Forest, Land and Resource Mgmt. Plan, MI. SUMMARY: EPA concluded that the concerns indicated in comments regarding the draft EIS have been adequately addressed.

ERP No. F-AFS-J65141-00, Ashley Nat'l Forest, Land and Resource Mgmt. Plan, WY and UT. SUMMARY: EPA requested additional documentation on

sedimentation monitoring plans and cumulative downstream impacts.

ERP No. F-COE-E61064-GA, Lake Alma Project, Reservoir Construction and Development, Outdoor Recreation Opportunities, 404 Permit, (COE adopted HUD FEIS #761792, filed 12-29-76), GA. SUMMARY: EPA has no major procedural objections to the COE adopting the Lake Alma HUD final EIS. The record should clearly show, however, that the HUD final EIS was the subject of an EPA referral action to the Council on Environmental Quality on March 24, 1977, based on the environmental unacceptability of the project. EPA also rated the proposed construction of the 1400 acre reservoir, the alternative selected in the final EIS, as environmentally unsatisfactory. EPA continues to support this position and will incorporate these concerns in our detailed comments on the COE supplemental draft EIS to the subject adoption.

ERP No. F-COE-H32007-MO, Southeast Missouri Port Facility Construction, Mississippi R., 404 Permit, MO. SUMMARY: The final EIS responded adequately to the concerns that EPA expressed with the draft EIS.

ERP No. F-COE-K36083-CA, Guadalupe River Flood Control Plan, Adjacent Streams, CA. SUMMARY: EPA agrees with the COE recommendation on the implementation and maintenance of mitigation measures to offset project impacts to fish and wildlife resources. EPA recomended that the Record of Decision commit to such measures and means to implement them.

ERP No. F-FHW-E40689-TN, TN Connector Route Construction, TN-6/US 31 to I-65, Right-of-Way Acqusition, 404 Permit Possible, TN. SUMMARY: EPA has no objection to the proposed project.

ERP No. F-FHW-F40283-IL, US 51/FAP 412 Improvement, I-55 at Bloomington—Normal to IL-71 Near Oglesby, 404 Permit, IL. SUMMARY: EPA has no objection to the preferred alternative.

ERP No. FB-USN-E11006-GA, Kings Bay Fleet Ballistic Missile Submarine Support Base, St. Marys Entrance Channel Dredging Program, Modification, GA. SUMMARY: EPA had nothing to add to its previous comments.

Regulations

ERP No. R-NOA-A01089-00, 15 CFR Parts 970 and 971, Deep Seabed Mining, Commercial Recovery and Revised Exploration Regulations (51 FR 26794). SUMMARY: EPA believes that NOAA's proposed regulations provide for adequate environmental safeguards for commercial recovery of deep seabed hard mineral resources. EPA recommended coordination with NOAA on any limitations imposed under EPA NPDES permits with conditions imposed under NOAA permits, and similar coordination of monitoring requirements.

Dated: December 2, 1986.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 86-27378 Filed 12-4-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0077.

Title: Post Construction Elevation Certificate/Floodproofing Certificate.

Abstract: The National Flood Insurance Program regulations require the elevation or floodproofing of newly constructed structures in designated special flood hazard areas. The elevation is the basis for charging property owners actuarial insurance rates. FEMA Form 81-31 provides the community officials and others professionally approved a means to provide elevation data to the NFIP. The information assists in FEMA's ability to measure the effectiveness of the NFIP regulations in eliminating or decreasing damage caused by flooding and the appropriateness of premium charges for insuring property against the flood hazard.

Type of Respondents: Individuals and households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, and Small businesses or organizations.

Number of Respondents: 25,000.

Burden Hours: 6,250.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C. Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: November 25, 1986.

Wesley C. Moore,

Acting Director, Office of Administrative Support.

[FR Doc. 86-27329 Filed 12-4-86; 8:45 am]

BILLING CODE 6718-01-M

Privacy Act of 1974; Proposed New System of Records

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed new system of records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Federal Emergency Management Agency gives notice of the proposed new system of records entitled, "FEMA/GOVT-1. National Defense Executive Reserve System." A new system report has been filed with the Speaker of the House of Representatives, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

DATE: Comments must be received on or before January 5, 1987. The notice, including the routine uses, become effective February 3, 1987, without further notice, unless comments necessitate otherwise.

ADDRESS: Address comments to the Federal Emergency Management Agency, Attn: Docket Clerk, Office of General Counsel, Room 840, 500 C Street, SW., Washington, DC 20472. Comments received will be available for public inspection at the above address from 9 a.m. to 4 p.m., Monday through Friday (except for legal holidays).

FOR FURTHER INFORMATION: Linda M. Keener, FOIA/Privacy Specialist, at (202) 646-3840.

SUPPLEMENTARY INFORMATION: Under Executive Order 11179 of September 22, 1964, the Director of the Federal Emergency Management is responsible for coordinating the activities of other Federal agencies in establishing units of the National Defense Executive Reserve; providing appropriate standards of recruitment and training; approving prospective members of the National Defense Executive Reserve; and issuing rules and regulations in connection with the program. Therefore, we believe that it is more cost-effective and appropriate for FEMA to establish a government-wide system of records to cover the records maintained by all Federal agencies to ensure uniformity and eliminate the need for each Federal agency to continue their own system of

records. Once the proposed government-wide system of records becomes effective, the individual agencies may delete any existing internal system of records which cover records on the National Defense Executive Reserve program or modify systems which included such records. A Report on New Systems" has been filed, concurrent with publication of this notice, with Congress and the Office of Management and Budget.

Dated: November 13, 1986.

Spence W. Perry,

General Counsel, Federal Emergency Management Agency.

FEMA/GOVT-1

SYSTEM NAME:

National Defense Executive Reserve System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records may be maintained in the personnel office, emergency preparedness unit, or other designated offices located at the local installation of the Department or Agency which currently employs the individual.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for and incumbents of NDER assignments.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains FEMA Form 85-3, National Defense Executive Reserve Qualifications Statement, which includes such items as name, date of birth, social security number, and other personnel and administrative records, skills inventory, training data, and other related records necessary to coordinate and administer the NDER program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Defense Production Act of 1950, E.O. 11179 dated September 22, 1964, as amended by E.O. 12148 dated July 20, 1979.

PURPOSE(S):

For the purpose of establishing units of the NDER in Federal departments and agencies in accordance with E.O. 11179, as amended by E.O. 12148. Individuals voluntarily apply for assignments but would not be considered government employees to perform emergency duties unless the President of the United States declared a mobilization. Assignments are made in 3 year increments and may either be redesignated or terminated. Individuals may at any time request voluntary termination.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) Names and addresses may be made available to the Association of the National Defense Executive Reserve and the National Defense Executive Reserve Conference Association to facilitate training and relevant information dissemination efforts for reservists in the NDER program; (b) to the appropriate agency whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or issued pursuant thereto: to a Federal, State, or local agency maintaining civil, criminal, regulatory, licensing or other enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit; (c) to the National Archives and Records Administration during records management inspections conducted under authority of 44 USC 2904 and 2906; (d) to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the request of the individual about whom the record is maintained; (e) to another Federal agency, to a court, or a party in litigation before a court or in administrative proceeding being conducted by a Federal agency, either when the government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena; and (f) to disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Records may be stored in file folders, file cards, on microfiche, and/or automated record systems.

RETRIEVABILITY:

By name, personal data, skills or agency.

SAFEGUARDS:

Records are stored in locked file cabinets or locked rooms. Automated records are protected by restricted access procedures and audit trails. Access to records is strictly limited to those personnel whose official duties require access and who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Records of current NDER reservists are maintained for duration of assignment which is based on 3 year incremental assignments and can either be redesignated or terminated. Records on terminated NDER reservists are kept for 5 years after termination from program and then destroyed. Applications of those individuals who apply for assignment and which are rejected are kept for 5 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, National Preparedness Programs Directorate, Federal Emergency Management Agency, Washington, DC 20472, will maintain a computerized record of all applications and assignments of NDER reservists for the Federal government as well as the personnel files for all individuals assigned to the Federal Emergency Management Agency. The Departments or Agencies will maintain their own personnel records on those individuals assigned to their respective Department or Agency.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should submit their inquiries to" (a) NDER applicants/assignees to FEMA Headquarters—Federal Emergency Management Agency, Associate Director, National Preparedness Programs Directorate, Washington, DC 20472; (b) NDER applicants/assignees to a FEMA Regional Office—Federal Emergency Management Agency, appropriate Regional Director as identified in Appendix AA to FEMA systems of records notices; (c) NDER applicants/assignees to Federal departments and/or agencies other than FEMA—contact the agency personnel, emergency preparedness unit, or Privacy Act Officer to determine location of records within the department/agency. Individuals should include their full name, date of birth, social security number, current address, and type of assignment/agency they applied with to be an NDER reservist.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6. Individuals applying to or assigned to Federal agencies other than FEMA should consult the appropriate department's/agency's Privacy Act Regulations which can be found in that department's/agency's Code of Federal Regulations or **Federal Register** notice.

RECORD SOURCE CATEGORIES:

The individuals to whom the record pertains. Prior to being designated as an NDER reservist, the applicant must successfully complete a background investigation conducted by the Office of Personnel Management which may include reference checks of prior employers, educational institutions, police departments, neighborhoods, and present and past friends and acquaintances.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86-27330 Filed 12-4-86; 8:45 am]
BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

The Chattahoochee Financial Corp.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 23, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *The Chattahoochee Financial Corporation*, Marietta, Georgia; to engage *de novo* through its subsidiary, CSI, Marietta, Georgia, in providing assistance in the preparation of applications with regulatory bodies, articles of incorporation, offering circulars, subscription agreements and related documents associated with the organization of financial institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 1, 1986.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 86-27315 Filed 12-4-86; 8:45 am]
BILLING CODE 6210-01-M

UST Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 23, 1986.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President), 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *UST Corp.*, Boston, Massachusetts; to acquire 100 percent of the voting shares of The Valley Bank and Trust Company, Bridgeport, Connecticut.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc Services Corp.*, Orrville, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Orrville Savings Bank, Orrville, Ohio.

2. *Crescent Holding Co.*, Napoleon, Ohio; to become a bank holding company by acquiring 39 percent of the voting shares of The Henry County Bank, Napoleon, Ohio.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. *Dominion Bankshares Corporation*, Roanoke, Virginia; to merge with First Dickson Corporation, Dickson, Tennessee, and thereby indirectly acquire First National Bank of Dickson, Dickson, Tennessee.

2. *First National Bankshares Corporation*, Ronceverte, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank in Ronceverte, Ronceverte, West Virginia.

D. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. Alpha Financial Corporation, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The District National Bank of Chicago, Chicago, Illinois, and The Archer National Bank of Chicago, Chicago, Illinois.

E. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Union County Bancshares, Inc.*, Anna, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Anna National Bank, Anna, Illinois.

F. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Morristown Holding Company*, Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Morristown, Morristown, Minnesota.

2. *Northfield Bancshares, Inc.*, Northfield, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank (N.A.)—Northfield, Northfield, Minnesota.

G. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bellevue Capital Company*, Bellevue, Nebraska; to acquire 99 percent of the voting shares of Otoe County National Bank and Trust Co., Nebraska City, Nebraska.

Board of Governors of the Federal Reserve System, December 1, 1986.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 86-27316 Filed 12-4-86; 8:45 am]

BILLING CODE 6210-01-M

Citicorp et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1834(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage in *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 22, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York; to engage *de novo* through any of its existing subsidiaries or any subsidiaries yet to be formed in acting as principal, agent, or broker for insurance (including home mortgage redemption insurance) that is directly related to an extension of credit by the bank holding company or any of its subsidiaries and limited to assuring the repayment of the outstanding balance due on the extension of credit in the event of the death, disability, or involuntary unemployment of the debtor pursuant to § 225.25(b)(8)(i)(A) and (B) of the Board's Regulation Y. Comments on this application must be received by December 19, 1986.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First State Bancorp of Princeton, Illinois, Inc.*, Princeton, Illinois; to engage *de novo* in the extension of credit life and death and accident insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y. Comments on this application must be received by December 19, 1986.

1. *USAmeribancs, Inc.*, Highland Park,. Illinois; to engage *de novo* through its subsidiary, USAmeribancs Credit Life Insurance Company, Bannockburn, Illinois, in underwriting credit life, accident and health insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in the State of Illinois.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Dakota Bankshares, Inc.*, Fargo, North Dakota; to engage *de novo* through its subsidiary, Dakota Data Processing, Fargo, North Dakota, in providing data processing and data transmission services, data bases and facilities that will be for financial, banking and economic purposes pursuant to § 225.25(b)(7) of the Board's Regulation Y.

2. *Norwest Corporation*, Minneapolis, Minnesota; to engage *de novo* through its subsidiary, Norwest International Finance, Inc., Minneapolis, Minnesota, in making, acquiring, or servicing loans for its own account and the accounts of others through the acquisition of certain international and other loans from affiliated banks and servicing and working out such loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Bancorp Hawaii, Inc.*, Honolulu, Hawaii; to engage *de novo* through its subsidiary, Bancorp Finance of Hawaii-Guam, Agana, Guam, in real estate appraisal activities pursuant to § 225.25(b)(13) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 28, 1986.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 86-27340 Filed 12-4-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Alcohol Research Center Grant on Alcohol and Immunologic Disorders, Including AIDS

AGENCY: National Institute on Alcohol Abuse and Alcoholism.

ACTION: Issuance of a Special Notification for an Alcohol Research Center Grant on Alcohol and Immunologic Disorders, Including AIDS.

SUMMARY: The National Institute on Alcohol Abuse and Alcoholism (NIAAA) announces the availability of a special notification for an Alcohol Research Center Grant on Alcohol and Immunologic Disorders, Including

Acquired Immunodeficiency Syndrome (AIDS). This award will support a new research Center to study the various aspects of the relation between alcohol and immune function and infectious diseases, with special attention on AIDS and the AIDS virus (variously called HTLV–III, LAV, and HIV). The research program of the Center should be interdisciplinary, conducted by scientists from the biomedical, behavioral and/or social science disciplines. The nature and mix of the research team will depend on the areas of strength of the applicant organization. The research program must include interrelated studies focusing on problems which have the potential for producing significant scientific information related to alcohol and immunologic disorders, including AIDS and the AIDS virus. Such research must be explicitly focused on the prevalence, diagnosis, etiology, prediction, clinical course, management, treatment, and prevention of alcohol-related infectious diseases, especially AIDS and the AIDS virus. Support may be requested for up to 5 years. It is estimated that up to $500,000 will be available in Fiscal Year 1987, and up to $1.5 million in future years to support a grant under this announcement.

Receipt Date of Applications for FY 1987 Funding: January 15, 1987.

For a Copy of the Announcement Contact: Albert Pawlowski, Ph.D., National Institute on Alcohol Abuse and Alcoholism, Division of Extramural Research, National Centers and Special Programs Branch, 5600 Fishers Lane, Parklawn Building, Room 14C–20, Rockville, Maryland 20857, Telephone: (301) 443–1273.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86–27318 Filed 12–4–86; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Circulatory System Devices Panel scheduled for December 12, 1986. The meeting was announced by notice in the **Federal Register** of November 24, 1986 (51 FR 42303).

FOR FURTHER INFORMATION CONTACT: Keith Lusted, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7594.

Dated: November 12, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–27322 Filed 12–4–86; 8:45 am]

BILLING CODE 4160–01–M

Request for Nominations for Voting Members on Public Advisory Committees

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain public advisory committees in the Center for Drugs and Biologics. Nominations will be accepted for current vacancies and vacancies that will or may occur on the committees during the next 12 months and beyond.

FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates. Final selection from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for receipt of nominations.

ADDRESSES: All nominations for membership, except for consumer-nominated members, should be sent to Morris Schaeffer (address below). All nominations for consumer-nominated members should be sent to Naomi Kulakow (address below).

FOR FURTHER INFORMATION CONTACT:

Morris Schaeffer, Office of Scientific Advisors and Consultants (HFN–30), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455,

or

Naomi Kulakow, Office of Consumer Affairs (HFE–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members for the following 17 advisory committees for vacancies listed below. Individuals should have expertise in the activity of the committee.

1. Anesthetic and Life Support Drugs Advisory Committee: four vacancies occurring June 30, 1987.

2. Anti-Infective Drugs Advisory Committee: six vacancies occurring November 30, 1987.

3. Arthritis Advisory Committee: three vacancies occurring September 30, 1987.

4. Cardiovascular and Renal Drugs Advisory Committee: two vacancies occurring June 30, 1987.

5. Dermatologic Drugs Advisory Committee: three vacancies occurring August 31, 1987.

6. Endocrinologic and Metabolic Drugs Advisory Committee: one vacancy occurring June 30, 1987.

7. Fertility and Maternal Health Drugs Advisory Committee: one vacancy occurring June 30, 1987.

8. Gastrointestinal Drugs Advisory Committee: two vacancies occurring June 30, 1987.

9. Oncologic Drugs Advisory Committee: one vacancy occurring June 30, 1987.

10. Peripheral and Central Nervous System Drugs Advisory Committee: four vacancies occurring January 31, 1987, including the consumer-nominated member.

11. Psychopharmacologic Drugs Advisory Committee: no vacancies occurring during the next 12 months.

12. Pulmonary-Allergy Drugs Advisory Committee: two vacancies occurring June 30, 1987.

13. Radiopharmaceutical Drugs Advisory Committee: four vacancies occurring June 30, 1987, including the consumer-nominated member.

The functions of the 13 committees listed above are to review and evaluate available scientific, technical, and medical data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in the area of medical specialties indicated by the title of the committee and to make appropriate recommendations to the Commissioner of Food and Drugs.

14. Drug Abuse Advisory Committee: three vacancies occurring June 30, 1987.

The functions of the Drug Abuse Advisory Committee are to: (1) Advise the Commissioner regarding the scientific and medical evaluation of all information gathered by both the Department of Health and Human Services (DHHS) and the Department of Justice regarding the safety, efficacy, and abuse potential for drugs or other substances; and (2) recommend actions to be taken by DHHS regarding the

marketing, investigation, and control of such drugs or other substances.

15. Allergenic Products Advisory Committee: three vacancies occurring August 31, 1987, including the consumer-nominated member.

16. Blood Products Advisory Committee: two vacancies occurring September 30, 1987.

17. Vaccines and Related Biological Products Advisory Committee: five vacancies occurring January 31, 1987.

The functions of the three committees listed above are to review and evaluate available scientific, technical, and medical data concerning the safety, effectiveness, and appropriate use of allergenic products, blood and products derived from blood and serum, vaccines, immnological products, and other biological products intended for use in the diagnosis, prevention, or treatment of human diseases, and to make appropriate recommendations to the Commissioner. These three committees also review and evaluate intramural research programs.

Criteria for Members

Persons nominated for membership on the committees described above must have adequately diversified research and/or clinical experience appropriate to the work of the committee in such fields as allergenic products, anesthesiology, surgery, infectious diseases, rheumatology, cardiology, dermatology, endocrinology, obstetrics and gynecology, gastroenterology, oncology, neurology, psychiatry, nuclear medicine, internal medicine, epidemiology, statistics, hematology, immunology, blood banking, virology, bacteriology, allergy, pediatrics, microbiology, nuclear biology, and biochemistry, or other appropriate areas of expertise.

The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, research, and/or public service relevant to the field of activity of the committee. The term of office is ordinarily 4 years.

Criteria for Consumer-Nominated Members

FDA currently attempts to place on each of the committees described above one voting member who is nominated by consumer organizations. These members are recommended by a consortium of 12 consumer organizations which has the responsibility for screening, interviewing, and recommending consumer-nominated candidates with appropriate scientific credentials. Candidates are sought who are aware of the consumer impact of committee issues, but who also possess enough technical background to understand and contribute to the committee's work. This would involve, for example, an understanding of research design, benefit/risk, and the legal requirements for safety and efficacy of the products under review, and considerations regarding individual products. The agency notes, however, that for some advisory committees, it may require such nominees to meet the same technical qualifications and specialized training required of other expert members of the committee. The term of office for these members is 4 years. Nominations for all committees listed above are invited for consideration for membership as openings become available.

Nomination Procedure

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Nominations shall specify the committee for which the nominee is recommended. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee, and appears to have no conflict of interest that would preclude committee membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)) and 21 CFR Part 14, relating to advisory committees.

Dated: November 28, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-27320 Filed 12-4-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-86-1658]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ACTION: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Tenant Participation in Multifamily Housing Projects, FR-1730

Office: Housing

Form number: None

Frequency of submission: On Occasion

Affected public: Individuals or Households, State or Local Governments and Businesses or Other For-Profit
Estimated burden hours: 14,880
Status: Extension
Contact:
James J. Tahash, HUD, (202) 426–3970
Robert Fishman, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 26, 1986.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 86–27354 Filed 12–4–86; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–010–07–4410–08]

Wyoming: Worland District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Meeting of the Worland District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 91–463, 94–579, and 95–514, and 43 CFR Part 1780, that a meeting of the Worland District Advisory Council will be held at the Worland District Office on December 12, 1986.

The purpose of the meeting is to discuss the Draft Washakie Resource Management Plan/Environmental Impact Statement (RMP/EIS) and the Draft Washakie Wilderness Environmental Impact Statement (EIS). Members of the Advisory Council will discuss the documents with BLM specialists. The Council also will offer its recommendations on the Draft RMP/EIS and Draft Wilderness EIS to the District Manager.

The meeting is open to the public.

DATE: Friday, December 12, 1986, 9:30 a.m.

ADDRESSES: Worland District Office, 101 South 23rd Street, Worland, Wyoming.

FOR FURTHER INFORMATION CONTACT: David Stout, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, Telephone: (307) 347–9871.

Edward L. Fisk,

Associate District Manager.

[FR Doc. 86–27332 Filed 12–5–86; 8:45 am]

BILLING CODE 4310–22–M

Fish and Wildlife Service

Division of Law Enforcement; Bolivia, Ban on Live Wildlife Exports

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information No. 11.

This is a schedule I notice: Wildlife subject to this notice is subject to detention, refusal of clearance, seizure, and forfeiture if imported into the United States.

Subject:

Bolivia—Ban on live wildlife exports.

Source of Foreign Law Information:

Announcement by the Bolivian Management Authority, confirmed by copy of Supreme Decree No. 21312 dated June 27, 1986, forwarded by the Department of State.

Action:

By NOI No. 3 (50 FR 34016) published August 22, 1985, and NOI No. 8 (50 FR 50965) published December 13, 1985, the Service notified the public that the Bolivian government had imposed bans upon exports of wildlife from that country and that refusal to clear imports of wildlife would occur for shipments into the United States from Bolivia. The Bolivian government has expanded and extended its ban for three years and has revoked previously issued export permits and documents. The only exception to the total prohibition against capture, possession, commercialization and export of all live wildlife, products and by-products is a grant to Asociacion de Industrial es de Curtiembre de Saurios (ASICUSA) for a maximum of 50,000 *Caiman crocodilus crocodilus* per year. Under its policy announced in NOI No. 4, published August 22, 1985, (50 Fed. Reg. 34016) the United States does not recognize Bolivia as a country of origin for shipments of *Caiman crocodilus crocodilus*. The grant provided to ASICUSA by the Supreme Decree 21312, will not be accepted. The Service, therefore, will not clear shipments of wildlife, or wildlife products, from Bolivia, or which designate Bolivia as country of origin, and exported after May 1, 1984.

EFFECTIVE DATE: December 5, 1986.

EXPIRATION DATE: June 28, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen King, Division of Law Enforcement, U.S. Fish and Wildlife Service, Post Office Box 28006, Washington, DC. 20005, Telephone: 202/343–9242.

Dated: November 26, 1986.

Frank Dunkle,

Director.

[FR Doc. 86–27255 Filed 12–4–86; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications for Permits; Joseph B. Snyder et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–713638

Applicant: Joseph B. Snyder, Ligonier, PA.

The applicant requests a permit to import a trophy from a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maintained by J. J. De Smit, Douglas, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

PRT–712136

Applicant: National Marine Fisheries Service, Gloucester, MA.

The applicant requests a permit to engage in research and recovery activities involving endangered and threatened species of leatherback sea turtles (*Dermochelys coriacea*), Kemp's ridley sea turtles (*Caretta caretta*) and hawksbill sea turtles (*Dermochelys coriacea*), stranded on coastal beaches from Virginia to Maine. Live stranded specimens may be removed from the wild for rehabilitation and then returned to the wild. Dead specimens may be kept for biological sampling and deposited in museums, schools, or other institutions for educational purposes. Applicant proposes to subpermit persons or institutions to respond to and handle stranded sea turtles. Research includes habitat use, migration and movement, feeding habits and will enhance the propagation and survival of the species.

PRT–674488

Applicant: James D. Fraser, Blacksburg, VA.

The applicant requests an amendment to his current permit to take (capture, band, mark, radio-tag, track, collect blood and feathers, recapture and conduct simulated harassment activities) on bald eagles (*Haliaeetus leucocephalus*) in the vicinity of Jordan Lake and Falls Lake, North Carolina, and maintain up to five bald eagles in

captivity, for scientific research and enhancement of survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: December 2, 1986.

Earl B. Baysinger,

Chief, Federal Wildlife Permit Office.

[FR Doc. 86-27373 Filed 12-4-86; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permits; Zoological Society of Philadelphia et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-712863

Applicant: Zoological Society of Philadelphia, Philadelphia, PA.

The applicant requests a permit to purchase in interstate commerce one male Galapagos tortoise (*Geochelone elephantopus*) from Herpetofauna, Inc., Fort Meyers, Florida. This specimen was removed from the wild in 1929 and has been held in captivity in the U.S. ever since. Purchase of this specimen will not affect the wild population and will expand the applicant's breeding program by infusing additional founder genes into the present captive population at this zoo.

PRT-713497

Applicant: Frank J. Mazzotti, University Park, PA.

The applicant requests a permit to conduct the following activities on American crocodiles (*Crocodylus acutus*) in and adjacent to Everglades National Park, Dade and Monroe Counties, Florida, to determine the effects of water management practices and human activities upon crocodiles:

(a) Locate and monitor nests and relocate nests to prevent loss when necessary;

(b) Capture, sex, weigh, and mark crocodiles and relocate as necessary;

(c) Attach radio transmitters to no more than 20 hatchlings and 10 juveniles per year; and

(d) Perform environmental contaminant analysis on tissues taken from dead crocodiles and failed eggs.

PRT-713765

Applicant: San Antonio Zoological Gardens and Aquarium, San Antonio, TX.

The applicant requests a permit to import two male and two female, wild caught giant armadillos (*Priodontes maximus*). These armadillos will be collected in Guyana by Octavia Wildlife, Inc. for the purpose of breeding. San Antonio Zoological Gardens and Aquarium is cooperating with three other zoos, the Lincoln Park Zoo, Chicago, IL, the Regents Park Zoo, London, England and the Rotterdam Zoo, Holland, in this breeding program.

PRT-713633

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to export one male wood bison (*Bison bison athabascae*) to the Tierpark Zoo in Berlin for the purpose of breeding. The addition of this male will bring new, unrelated genetic blood to their captive herd.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: December 2, 1986.

Earl B. Baysinger,

Chief, Federal Wildlife Permit Office.

[FR Doc. 86-27372 Filed 12-4-86; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Intention to Extend Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend a concession contract with Temple Bar Resort authorizing it to continue to provide lodging, food and beverage, marina, merchandising, and related facilities and services for the public at the Temple Bar Site of Lake Mead National Recreation Area for a period of one (1) year from January 1, 1987, through December 31, 1987.

This contract extention has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1986, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand-delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Dated: November 6, 1986.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 86-27402 Filed 12-4-86; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

Intention To Extend Concession Contract; Forever Living Products, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend a concession contract with Forever Living Products, Inc., authorizing it to continue to provide food and beverage, marina, trailer village, merchandise, and related

facilities and services for the public at the Callville Bay Site of Lake Mead National Recreation Area for a period of one (1) year from January 1, 1987, through December 31, 1987.

This contract extention has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1986, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand-delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Dated: November 6, 1986.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 86-27403 Filed 12-4-86; 8:45 am]

BILLING CODE 4310-70-M

Reclamation Bureau

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation.

ACTION: Notice of change in discount rate for water resources planning.

SUMMARY: This notice sets forth that the discount rate to be used in Federal water resources planning for fiscal year 1987 is 8⅞ percent.

DATE: This discount rate is to be used for the period October 1, 1986, through and including September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Norman H. Starler, Bureau of Reclamation, Department of the Interior, Washington, DC 20240. Telephone 202/343-5605.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 8⅞ percent for fiscal year 1987.

This rate has been computed in accordance with section 80(a), Pub. L. 93-251 (88 Stat. 34) and 18 CFR 704.39, which (1) specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity; and (2) provide that the rate shall not be raised or lowered more than one-quarter of one percent for any year. The Treasury Department calculated the specified average yield to be 8.89 percent. Since the rate in fiscal year 1986 was 8⅝ percent, the rate for fiscal year 1987 is 8⅞ percent.

The rate of 8⅞ percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs, or otherwise converting benefits and costs to a common time basis.

Dated: November 26, 1986.

C. Dale Duvall,

Commissioner.

[FR Doc. 86-27346 Filed 12-4-86; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30932]

Burlington Northern Railroad Co., and Oregon-Washington Railroad & Navigation Co.; Joint Project for Relocation of a Line of Railroad; Exemption

On November 7, 1986, Burlington Northern Railroad Company (BN) filed a notice of exemption under 49 CFR 1180.2 (d)(5) for a joint project with Oregon-Washington Railroad & Navigation Company and its lessee, Union Pacific Railroad Company (UP), to relocate a line of railroad.

BN and UP jointly operate a main line of railroad extending north from Centralia, through East Olympia and St. Clair, to Tacoma, WA. Up owns and operates a line extending northwest from East Olympia to the Capitol-Campus area in Olympia, WA. BN operates a line (the St. Clair-West line), that extends from St. Clair to the west, passing through the Capitol-Campus area. East of the Capitol-Campus area, BN's line crosses a railroad bridge over Interstate Highway 5. BN must remove this bridge to facilitate a highway improvement project of the State of Washington. Therefore, in order to accommodate the State of Washington and preserve service to its existing shippers on the St. Clair-West line, BN proposes to: (1) Acquire trackage rights over the UP line between East Olympia (milepost 0.0) and Olympia (milepost 7.24); and (2) abandon that portion of its St. Clair-West line between milepost 6.5 and milepost 9.1. No shippers are located on the line segment to be abandoned. The acquisition of trackage rights over the described UP line will allow BN to preserve rail service to all shippers on the remaining segments of its St. Clair-West line.

The joint BN-UP project involves the relocation of a line of railroad that does not disrupt service to shippers. Therefore, it falls within the class exemptions identified at 49 CFR 1180.2(d)(5). The Commission categorically exempted these transactions from regulation under 49 U.S.C. 11343 in *Railroad Consolidation Procedures*, 366 I.C.C. 75 (1982). The Commission also determined that line relocations embrace trackage rights transactions such as proposed here. *See D.T. & I.R. Trackage Rights*, 363 I.C.C. 878 (1981). In addition, the Commission has determined that rail line abandonments incidental to line relocations come within the class exemption at 49 CFR 1180.2(d)(5). *See* Finance Docket No. 30639, *Louisiana & Ark. Ry. Co.—Trackage Rights Exemption* (not printed), served April 17, 1985.

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980). Any employees affected by the proposed abandonment will be protected by the conditions on *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505 (d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: November 25, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-27379 Filed 12-4-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30894]

Canadian Pacific Limited Acquisition and Assignment; of Lease Exemption; Central Terminal Railway Co.; Exemption

Canadian Pacific Limited (CP) and Central Terminal Railway Company (Terminal Company) have filed a notice of exemption in connection with an agreement under which (a) CP would acquire all of the assets of its wholly owned subsidiary, Terminal Company, and (b) Terminal Company's operating lease with Soo Line Railroad Company (Soo) would be assigned to CP. A majority of Soo's stock is owned by CP.

CP, a Canadian corporation, operates a rail system in Canada as well as lines in Maine and Vermont. Terminal Company uses terminal facilities in Chicago, IL. It does not conduct any rail operations, does not own or lease any rail equipment, and has no employees. Its terminal facilities are operated by Soo. Under the proposed transaction, Terminal Company will be dissolved as a corporate entity, its outstanding capital stock will be cancelled, and its assets (including the terminal facilities operated by Soo) will be distributed to CP. Soo will continue to operate Terminal Company's rail facilities pursuant to its lease with Terminal Company, which will be assigned to CP thereby making CP the lessor. The proposed transaction is intended to simplify CP's corporate structure and achieve management efficiencies by eliminating the expense associated with maintaining Terminal Company as a separate corporate entity.

The acquisition of Terminal by CP is a transaction within a corporate family of the type specifically exempted under 49 CFR 1180.2(d)(3), from prior approval. this transaction will not result in any adverse changes in the level of service to shippers, or significant operational changes. Nor will it have any impact on the competitive balance with carriers outside the corporate family. Because Soo already has been authorized to operate the facilities of Terminal pursuant to a lease arrangement,[1] assignment of that lease from Terminal to CP with Soo continuing to provide operations under the lease does not require approval under 49 U.S.C. 11343. Therefore, an exemption of that lease assignment is unnecessary.

The parties claim that because Terminal has no employees, the imposition of labor protective conditions is not necessary. However, the exemption of intracorporate transactions does not relieve a carrier of its statutory obligation to protect the interests of employees. *See* 49 U.S.C. 10505(g)(2), and 49 U.S.C. 11347. *See also,* 49 CFR 1180.2(d). To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under sections 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), will be imposed.

Decided: December 2, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-27490 Filed 12-4-86; 8:45 am]

BILLING CODE 7035-01-M

[1] *See* Finance Docket No. 27131, *So Line R. Co.—Lease of Property and Trackage—Central Terminal Railway Company* (not printed), served October 30, 1972

[Finance Docket No. 30941]

Consolidated Rail Corporation; Trackage Rights Exemption; Baltimore and Ohio Railroad Co.; Exemption

The Baltimore and Ohio Railroad Company (B&O) has agreed to grant overhead trackage rights to Consolidated Rail Corporation (Conrail) over B&O's line between Philadelphia, PA and Washington, DC as follows:

(1) Between Conrail's connections with the tracks of B&O at Park Junction, Philadelphia, PA, and Anacostia Junction, Washington, DC, and (2) between Conrail's connection with the tracks of B&O at West Aikin, MD, and through B&O's passing siding to a point on B&O's main track at East Aikin MD, and thence over tracks of B&O to Bay View, MD.

The trackage rights will take effect seven (7) days after November 17, 1986, or on such latter date as B&O and Conrail agree to, as evidenced by an exchange of letters.

As a condition to use of this exemption any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: December 2, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-27489 Filed 12-4-86; 8:45 am]

BILLING CODE 7035-01-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Internal Revenue Service Building, 1111 Constitution Avenue NW., in Washington, DC on January 8 and 9, 1987. The meeting on January 8 will be in Room 3411 beginning at 9:00 a.m. The January 9 meeting will be in Room 3313 beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion of future Joint Board examinations in actuarial methematics and methodology referred to in Title 5 U.S. Code, section 1242 (a) (1) (B) and to review the November 1986 Joint Board examination in order to make recommendations relative thereto, including the minimum acceptable pass score. In addition, possible topics for inclusion on the syllabus for the Joint Board's examinations will be discussed.

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the November 1986 Joint Board examination fall within the exceptions to the November 1986 Joint Board examination fall within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552(c) (9) (B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the Joint Board examination syllabus will commence at 1:30 p.m. on January 8 and will continue for as long as necessary to complete the discussion, but not beyond 3:00 p.m. This portion of the meeting will be open to the public as space is available. Time permitting, after discussion of the program by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and

Committee by sending it to the Committee Management Officer. Notifications and statements should be mailed no later than December 24, 1986 to Mr. Leslie S. Shapiro, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, DC 20220.

Dated: December 2, 1986.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 86-27341 Filed 12-4-86; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

Cathodic Electrocoating Co.; Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on November 19, 1986, a proposed consent decree in *United States* v. *Cathodic Electrocoating Company*, Civ. No. 86-CV-71873-DT, was lodged with the United States District Court for the Eastern District of Michigan. This agreement resolves a judicial enforcement action brought by the United States against the Cathodic Electrocoating Company for violations of the Clean Air Act at its miscellaneous metal parts coating facility in Ecorse, Michigan.

The proposed consent decree resolves violations of the Clean Air Act and the Michigan SIP alleged in a complaint filed against Cathodic on May 2, 1986. Cathodic is a major source of VOCs, emitting more than 100 tons per year. Cathodic, which began operations in late 1980, was required to obtain permits before it began operating. The Consent Decree achieves compliance with the Michigan SIP as follows. First, Cathodic has now been issued the required permits for its facility. Second, Cathodic will install a thermal incinerator by February 28, 1987, to control emissions from the topcoat section of its coating line. Third, Cathodic will use a low-VOC (1.2 lb./gal.) prime coating in the dip tank section of its coating line. Fourth, the Decree requires interim reductions in VOC emissions and the installation of improved coating application equipment and other measures to reduce VOC emissions. Final compliance at the facility must be achieved by April 1, 1987. The Decree contains monitoring and monthly reporting requirements and establishes stipulated penalties, including $50,000 for the failure to meet the final compliance deadline. Finally, Cathodic has agreed to pay a civil penalty of $120,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cathodic Electrocoating Company*, D.J. Ref. 90-5-2-1-921.

The proposed consent decree may be examined at the office of the United States Attorney or the regional office of the Environmental Protection Agency as follows:

U.S. Attorney: U.S. Attorney, Eastern District of Michigan, Federal Building and U.S. Courthouse, 231 West Lafayette, Eighth Floor, Detroit, Michigan 48226

EPA: Office of Regional Counsel, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-27313 Filed 12-4-86; 8:45 am]

BILLING CODE 4410-01-M

Crown Enameling Co.; Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on November 19, 1986, a proposed consent decree in *United States* v. *Crown Enameling, Inc.*, Civ. No. 85-CV-70213-DT, was lodged with the United States District Court for the Eastern District of Michigan. This agreement resolves a judicial enforcement action brought by the United States against Crown Enameling, Inc., for violations of the Clean Air Act at its miscellaneous metal parts coating facility in Detroit, Michigan.

Under the Consent Decree, Crown may transfer its non-compliant coating operations to a new facility which is being leased and operated by Crown Enameling Products, Inc., a sister corporation of Crown. The new facility is located at 12601 Southfield Road, Detroit, Michigan. A catalytic incinerator is being installed at the new facility in October, 1986. Production is to commence at Southfield on November 1, 1986. Crown will gradually transfer its non-compliant coating operations to the Southfield facility. In addition, the Decree requires interim reductions in VOC emissions at its existing facility in Detroit. Crown must also install improved coating application equipment at the Detroit facility. Final compliance at the Detroit facility is required by April 1, 1987. The new Southfield facility, which has already received permits, must remain in compliance with those permit conditions at all times.

The Crown decree establishes monthly reporting and monitoring requirements for both the Detroit and Southfield facilities. A $250,000 stipulated penalty will be assessed if Crown fails to meet the final compliance deadline in the Consent Decree. If Crown at any time decides not to proceed with the transfer of operations, it must achieve final compliance at the Detroit facility within 30 days of its decision not to transfer. Finally, the Crown Decree provides for an $80,000 civil penalty.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Crown Enameling, Inc.*, D.J. Ref. 90-5-2-1-763.

The proposed consent decree may be examined at the office of the United States Attorney or the regional office of the Environmental Protection Agency as follows:

U.S. Attorney: U.S. Attorney, Eastern District of Michigan, Federal Building and U.S. Courthouse, 231 West Lafayette, Eighth Floor, Detroit, Michigan 48226

EPA: Office of Regional Counsel, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement

Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-27314 Filed 12-4-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 85-55]

Grant of Registration With Restrictions; Michael B. McCormick, M.D.

On November 13, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Michael B. McCormick, M.D., 3661 East Las Posas Road, Suite G1162, Camarillo, California 93010 (Respondent) proposing to deny his application for registration as a practitioner which was executed on April 23, 1985. The statutory predicate for the proposed action was Respondent's conviction in the United States District Court for the Northern District of Oklahoma of violating 21 U.S.C. 843(a)(4)(A), a felony relating to controlled substances. By letter dated November 20, 1985, Respondent requested a hearing on the issues raised by the Order to Show Cause.

The hearing in this matter was held in Los Angeles, California on June 4, 1986. Administrative Law Judge Francis L. Young presided. On September 26, 1986, Judge Young issued his opinion and recommended ruling, findings, of fact, conclusions of law and decision. No exceptions were filed, and on October 23, 1986, Judge Young transmitted the record of these proceedings to the Administrator of DEA. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that the Oklahoma Bureau of Narcotics and Dangerous Drugs (BNDD) received information from a confidential informant in February 1984, that Respondent was illegally prescribing Dilaudid and other drugs, and possibly abusing drugs himself. In February 1984, agents from Oklahoma BNDD found two prescriptions, each for 100 Dilaudid tablets, in a pharmacy in suburban Tulsa, Oklahoma in the name of Rachid Finge written by Respondent. These prescriptions were dated March 9, 1983 and April 15, 1983. In March 1984 agents found three prescriptions for Dilaudid written by Respondent for Louis Tokar. These prescriptions were dated May 5, 1983, June 7, 1983, and June 29, 1983.

The Administrative Law Judge found that Rachid Finge had never been a patient of Respondent, and that he had returned to Lebanon in September 1979. Louis Tokar had never been treated by Respondent and had died in a Missouri hospital on May 31, 1983. Respondent wrote four of these prescriptions with the knowledge that they were not for the individual named on the prescription. In all five instances, Respondent had never seen the individual named on the prescription as a patient.

Respondent was charged in the United States District Court for the Northern District of Oklahoma with having willfully and knowingly omitted material information from a written prescription. He pled guilty and was sentenced to six months incarceration, and 30 months probation. Respondent's medical license in Oklahoma was placed on probation by the Oklahoma Board of Medical Examiners, and his Oklahoma BNDD registration was revoked on May 30, 1985. Respondent moved to California and submitted an application for registration with DEA on April 23, 1985, disclosing his felony conviction.

On August 21, 1985, while the administrative proceeding was in process, Respondent was erroneously issued a DEA Certificate of Registration with an expiration of January 31, 1986. The registration was renewed pursuant to a renewal form submitted by Respondent on December 21, 1985, on which he again disclosed his criminal conviction.

There is no evidence that Respondent wrote illegal prescriptions other than the five previously mentioned prescriptions. Respondent has served the sentence for his criminal conviction, and is complying with the terms of his probation. His medical license is on probation for five years by both the Oklahoma and California medical boards. Respondent was highly regarded by the owners and patients at a small medical clinic in which he worked in California. He has been candid with his employers, disclosing his criminal record.

The Administrative Law Judge found that Respondent was a sincere, truly contrite, and basically well-intentioned but unsophisticated young physician. There is no evidence of any wrongdoing since his prescribing of the five illegal Dilaudid prescriptions in Oklahoma.

The Administrative Law Judge concluded that though there is a lawful basis for the revocation of Respondent's DEA Certificate of Registration, it is not necessary or appropriate to do so. It is highly unlikely that Respondent will misuse his privilege to prescribe, administer and dispense controlled substances. The public will be protected if the Respondent is permitted to maintain his DEA Certificate of Registration subject to the following conditions:

1. Respondent shall maintain a record of all controlled substances prescribed, dispensed or administered by him, showing the following: (a) The name address of the patient, (b) the date, (c) the name and quantity of the controlled substance, and (d) the pathology and purpose for which the controlled substance was furnished. Respondent shall maintain these records in a separate file or ledger in chronological order and shall make them available for inspection and copying by the Administrator of DEA or his designee upon request.

2. Respondent shall not prescribe, administer, dispense, order, or possess any Schedule II controlled substances as defined by the Controlled Substances Act (21 U.S.C. 801, *et seq.*), except in a hospital setting, and except for such substances as may have been legally prescribed for him by another practitioner for a bona fide illness or condition.

The Administrator adopts the proposed findings of fact, conclusions of law and decision of the Administrative Law Judge in its entirety. Accordingly, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator hereby orders that the Respondent be granted a DEA Certificate of Registration in Schedules II, IIN, III, IIIN, IV and V subject to the restrictions listed above. This order is effective immediately.

Dated: November 26, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-27306 Filed 12-4-86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application; Eli Lilly Industries, Inc.

Pursuant to § 1301.43 (a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 5, 1986, Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaquez, Puerto Rico 00708, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance bulk

dextropropoxyphene (non-dosage forms) (9273).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than January 5, 1987.

Dated: December 1, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-27349 Filed 12-4-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85-63]

Manuel A. Sanchez-Acosta, M.D.; Revocation of Registration

On December 5, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued two Orders to Show Cause to Manuel A. Sanchez-Acosta, M.D. (Respondent) at 290 West End Avenue, New York, New York 10023 and c/o Health Improvement, 16 West 45th Street, New York, New York 10036, proposing to revoke Respondent's DEA Certificates of Registration, AS2396011 and AA5052256 and deny any pending applications for renewal of those registrations. These Orders to Show Cause alledged that the continued registration of Dr. Sanchez-Acosta would be inconsistent with the public interest as set forth in 21 U.S.C. 823(f). The basis for this allegation was that Respondent prescribed excessive quantities of controlled substances outside the scope of this professional medical practice and for no legitimate purpose, and that on August 7, 1985, after a jury trial in the United States District Court for the Southern District of New York, Respondent was found guilty of illegal distribution and dispensing of the controlled substance methaqualone in violation of 21 U.S.C. 841(a)(1).

The Order to Show Cause was sent to Dr. Sanchez-Acosta by registered mail. In a letter dated December 12, 1985, Respondent's counsel requested a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. A hearing was held in New York City on June 16, 17 and 18, 1986. On September 25, 1986, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law, ruling, and decision. No exceptions were filed and, on October 23, 1986, the Administrative Law Judge transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316. 67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Respondent is 73 years old, was first licensed to practice medicine in New York in 1947, and took one course on insomnia and sleep disorders at the Unversity of Syracuse in 1981. Dr. Sanchez-Acosta was making a marginal living by practicing medicine before his employment at Jorum Associates, a clinic incorporated in New York in 1981 ostensibly for the treatment of sleeping disorders.

Respondent was employed for three months (August to November, 1981) at two clinics run by Jorum Associates. During this time, he knowingly and willingly issued 1,460 prescriptions for the widely abused Schedule II substance Quaalude (methaqualone). These prescriptions totaled 71,777 Quaalude tablets. On November 5, 1981, alone he wrote 115 prescriptions for Quaalude, followed by 101 presecriptions for Quaalude on November 6, 1981.

An investigation of the Jorum Clinic and a review of patient charts revealed that legitimate medicine was not practiced at the clinic. Rather it was a cover-up for the illegal sale of prescriptions for methaqualone to abusers. Respondent made no apparent effort to evaluate his patient's sleep problems. He prescribed methaqualone to 96.6% of them. His actions at the clinic displayed an obvious disregard for the health and safety of patients at the clinic and a lack of medical judgment.

During the pendency of these preceedings, on May 9, 1986, in the United States District Court for the Southern District of New York, Dr. Sanchez-Acosta was convicted and sentenced to two years imprisonment and two year Special Parole to commence upon expiration of confinement. This conviction, of a felony offense related to controlled substances, is an additional statutory basis for the revocation of Respondent's registration. 21 U.S.C. 824(a)(2).

The Administrative Law Judge concluded that Respondent has demonstrated that he cannot be entrusted with a DEA registration. Based on the conduct which led to his ultimate arrest and conviction, Dr. Sanchez-Acosta's continued registration would be wholly inconsistent with the public interest as set forth in 21 U.S.C. 823(f).

The Administrative Law Judge recommended that Respondent's DEA registration be revoked and that any pending applications for renewal of such registration be denied. The Administrator adopts the recommended ruling, findings of fact, conclusions of Law and decision of the Administrative Law Judge in its entirety. The registration must be revoked and any pending applications denied.

Having concluded that there is a lawful basis for the revocation of Respondent's registration and denial of any pending applications, and having further concluded that under the facts and circumstances presented in this case the registration should be revoked and any applications denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration AS 2396011 and AA5052256, previously issued to Manuel A. Sanchez-Acosta, M.D., be, and hereby are, revoked. The Administrator further orders that any pending applications for renewal of such registration are hereby denied. This order is effective January 5, 1987.

Dated: December 2, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-27350 file 12-4-86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Western Fher Laboratories, Inc.

By Notice dated June 12, 1986, and published in the **Federal Register** on June 18, 1986; (51 FR 22149), Western Fher Laboratories, Inc., Carretera 132, KM 25.3, P.O. Box 7468, Ponce, Puerto Rico 00732, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Phenmetrazine and its salts (1631), as basis class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and

Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: December 1, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration.

[FR Doc. 86-27348 Filed 12-4-86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background:

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503 (telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics

Pilot Survey Involving On-site Evaluation of OSHA Records (Records Check) BLS 1122

Reporting: once per selected unit

Manufacturing businesses or others for profit; and small manufacturing businesses or organizations.

200 responses; 1,600 hours; 1 form

This is a pilot program to develop and test a methodology for on-site visits to verify the accuracy and completeness of manufacturing employers' work-related injury and illness records. Accurate records are needed by BLS and OSHA to carry out the mandates of the Occupational Safety and Health Act of 1970.

Revision

Bureau of Labor Statistics

Annual Survey of Occupational Injuries and Illnesses

1200-0045: OSHA No. 200S

Reporting; Annually

Businesses or others for profit; farms (except those with fewer than 11 employees); non-profit institutions; prenotified small businesses and organizations; and prenotified businesses and organizations in low hazard industries; State and local governments as directed by individual State law.

280,232 responses; 72,500 hours; 1 form

The OSHA No. 200S is the survey form used by employers to report records of job-related injuries and illnesses. The data are needed by BLS and OSHA to report on, and carry out enforcement of standards to guarantee workers' safety and health on the job.

Employment and Training Administration

National Longitudinal Survey of Work Experience of Youth Questionaire

1205-0044

Annually

Individuals or households

10,600 respondents; 8,798 hours

The information provided in this survey will be used by the Department of Labor and other government agencies to help develop programs and policies to ease the employment, unemployment and related problems faced by young men and women in this age group.

Extension

Office of Labor-Management Standards

Labor Organizations and Auxiliary Reports

1214-0001; OLMS 1214

On occasion, semi-annually, annually

Small Businesses or other organizations; Non-profit institutions; Businesses or other for-profit

68,155 responses; 58,785 hours; 13 forms

The LMRDA requires unions to file annual financial reports, trusteeship reports, copies of their constitution and bylaws. Under certain circumstances reports are required of union officers and employees, employers, labor consultants and surety companies. Filers are required to retain supporting records 5 years. Unions are required to retain election records 1 year.

Office of the Solicitor

Equal Access to Justice Act

1225-0013

On occasion

Individuals or households; State or local governments; businesses or other for profit; non-profit institutions; small businesses or organizations

10 responses; 50 hours

The Equal Access to Justice Act provides for the payment of fees and expenses to eligible parties who have prevailed against the Department in certain administrative proceedings. In order to obtain an award, the statute and regulations require the filing of an application.

Signed at Washington, DC this 1st day of December, 1986.

Marizetta L. Scott,

Acting Departmental Clearance Officer.

[FR Doc. 86-27360 Filed 12-4-86; 8:45 am]

BILLING CODE 4510-24-M

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I	*Page Nos.*
Connecticut:	
CT86-1 (Jan. 3, 1986)	65-68
New York:	
NY86-2 (Jan. 3, 1986)	645
NY86-7 (Jan. 3, 1986)	693
NY86-18 (Jan. 3, 1986)	784-785
Pennsylvania:	
PA86-8 (Jan. 3, 1986)	859-861, 870
PA86-24 (Jan. 3, 1986)	954-955
Volume II	
Minnesota:	
MN86-7 (Jan. 3, 1986)	507, 509-511
MN86-8 (Jan. 3, 1986)	527-529
Volume III	
Arizona:	
AZ86-2 (Jan. 3, 1986)	25
Colorado:	
C086-1 (Jan. 3, 1986)	97
Nevada:	
NV86-2 (Jan. 3, 1986)	235-236

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 28th day of November 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-27187 Filed 12-04-86; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-17,104]

American Cigar Co., Mountaintop, PA; Negative Determination Regarding Application for Reconsideration

By an application dated August 21, 1986, a company official at American Cigar Company, Mountaintop, Pennsylvania requested administrative reconsideration of the Department of Labor's Certification to expand its scope to include all workers at American Cigar Company's facility at Mountaintop, Pennsylvania. The certification was published in the **Federal Register** on September 16, 1986 (51 FR 32868).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous:

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

A company official forwarded the employees' claim that workers in departments other than making and stripping should be included because of a steady decline in business, closing of the company and moving machinery out of the country.

Findings in the investigation show that the Department's certification was limited only to workers in the Making and Stripping Departments at Mountaintop. Company imports of tobacco leaf (on bobbins) increased in 1985 compared with 1984 and imported leaf wrappers would continue to be used by the subject firm throughout 1986. The company installed new equipment to facilitate the use of imported leaf. These actions supported the certification of workers performing making and stripping.

Company officials for the new owners (Consolidated Cigar Corporation) provided industry data on consumption and imports of cigars. Imports are of the larger cigars which do not compete with the small cigars that are produced at the Mountaintop facility. Consumption data indicate a long term downward trend in per capita cigar consumption.

Findings in the investigation also show that in July, 1986 the Consolidated Cigar Corporation bought all the assets of American Cigar, except the plant at Mountaintop, and transferred production to Consolidated Cigar's plants in McAdoo, Pennsylvania and Cayey, Puerto Rico. Workers for American Cigar at Mountaintop worked beyond the purchase date finishing orders for American Cigar. A domestic transfer of production would not provide a basis for certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 25th day of November 1986.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 86-27365 Filed 12-4-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,199]

Cherin Dress Company, Inc., Newark, NJ; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 25, 1986 applicable to all workers of Cherin Dress Company, Incorporated, Newark, New Jersey. The certification notice was published in the **Federal Register** on October 10, 1986 (51 FR 36488).

Based on new information furnished by the company, a few workers were retained beyond the October 30, 1985 termination date. The intent of the certification is to cover all workers at the Cherin Dress Company, Inc., Newark, New Jersey who were affected by the decline in the sales or production of ladies' dresses related to import competition. The notice, therefore, is amended by providing a new termination date of March 1, 1986.

The amended notice applicable to TA-W-17,199 is hereby issued as follows:

All workers of Cherin Dress Company, Incorporated, Newark, New Jersey who became totally or partially separated from employment on or after January 10, 1985 and before March 1, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 3rd day of November 1986.

Barbara Ann Farmer,

Acting Director, Office of Program Management, UIS.

[FR Doc. 86-27358 Filed 12-4-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,748]

Glen Irvan Corp., Penfield, PA; Nagative Determination on Reconsideration

On October 27, 1986, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers producing coal at Glen Irvan, Penfield, Pennsylvania. This determination was published in the **Federal Register** on November 7, 1986 (51 FR 40530).

The application for reconsideration was filed by an official of the company. The company official claims that imported oil adversely affected the sale of coal from the Glen Irvan Corporation to utility companies and that oil imports have depressed the price of coal below the cost of production.

The Department reviewed its findings in the investigative case file. Those findings show that the company closed in April, 1986 and the workers produced coal. U.S. imports of coal are negligible. Imports are less than one percent in relation to domestic production. Section 222 of the Trade Act states that there must be increased imports of the product produced by the workers' firm and that those increased imports must "contribute importantly" to worker separations and decreases in production or sales in order for the worker group to be certified eligible to apply for worker adjustment assistance.

On reconsideration the Department surveyed the major customers of Glen Irvan and found that they did not substitute oil for coal in 1985 or 1986. Glen Irvan's customers reported that oil accounts for a very small portion of their generating needs for electricity. Examining the responses in detail show that one customer had no oil generating capacity, another had increased nuclear generation in 1985, another had increased hydroelectric generation in 1985 and another had increased purchases of coal from Glen Irvan in 1985.

Whether or not oil imports had a depressing effect on the price of coal in the U.S. is not a factor at issue. Price is not a criterion for certification. U.S. coal production in 1985 remained at record levels and actually increased in the first quarter of 1986 compared to the same quarter in 1985. Most importantly, however, the findings of the Department's survey of Glen Irvan's customers showed that Glen Irvan's customers did not substitute oil for coal.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to former workers at Glen Irvan Corporation, Penfield, Pennsylvania. Signed at Washington, DC, this 26th day of November 1986.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 86-27366 Filed 12-4-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,813]

LaSalle Steel Co., Spring City, PA; Affirmative Determination Regarding Application for Reconsideration

By an application postmarked October 29, 1986, the International Association of Bridge, Structural and Ornamental Iron Workers requested administrative reconsideration of the Department of Labor Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of former workers at the LaSalle Steel Company, Spring City, Pennsylvania. The determination was published in the **Federal Register** on October 31, 1986 (51 FR 39814).

The union claims that the Department used the wrong import tables and should have used import tables for hot and cold drawn steel. The union lists several foreign steel firms that are alleged to be competitors of LaSalle Steel Company.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 26th day of November 1986.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 86-27357 Filed 12-4-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,295]

LTV Steel Co., Massillon Bar Plant, Massillon, OH; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance; Correction

In FR Doc. 86-20898 appearing on page 32864 in the **Federal Register** of September 16, 1986, the above referenced plant name is corrected by inserting the Union Drawn Division Plant in place of the Massillon Bar Plant.

Negative Determinations

TA-W-17,295; LTV Steel Co., Union Drawn Division Plant, Massillon, OH.

Signed at Washington, DC, this 26th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-27361 Filed 12-4-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,132]

LTV Steel Co., Massillon Works (Formerly Massillion Bar Plant) Massillon, OH, Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 23, 1986 applicable to all workers of the Massillon Bar Plant of LTV Steel Company, Canton, Ohio. The Certification notice was published in the **Federal Register** on July 16, 1986 (51 FR 25764).

Based on new information furnished to the Department, the notice is amended to show the proper name of the plant as the Massillon Works, formerly the Massillon Bar Plant, and the correct location of the plant as Massillon, Ohio.

The intent of the notice is to cover all workers of LTV Steel Company's Massillon Works who were adversely affected because of increased import competition of steel bars.

The amended notice applicable to TA-W-17,132 is hereby issued as follows:

All workers of the Massillon Works of LTV Steel Company in Massillon, Ohio who became totally or partially separated from employment on or after December 17, 1984 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 26th day of November 1986.

Carolyn M. Golding,

Director, Unemployment Insurance Service, UIS.

[FR Doc. 86-27359 Filed 12-4-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,579]

Newport Steel Corp., Newport, KY, Wilder, KY; Affirmative Determination Regarding Application for Reconsideration

By an application dated October 28, 1986, the United Steelworkers of America requested administrative reconsideration of the Department of Labor Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers at Newport Steel Corporation's plants in Newport, Kentucky and Wilder, Kentucky. The determination was published in the **Federal Register** on October 31, 1986 (51 FR 39814).

The union claims that the Department used the wrong import tables and should have used import tables for line pipe, oil tubular products and piling.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 26th day of November 1986.

Carolyn M. Golding,

Director, Unemployment Insurance Services, UIS.

[FR Doc. 86-27356 Filed 12-4-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,571]

Wehr Steel Corp., Milwaukee, WI; Negative Determination Regarding Application for Reconsideration

By an application dated October 29, 1986 the United Steelworkers of America requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers at Wehr Steel Corporation, Milwaukee, Wisconsin. The denial notice was published in the **Federal Register** on October 31, 1986 (51 FR 39814).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union states that the Department's denial implies that the plant closure was due to a strike and not imports. It is also claimed that the net tons shipped by Wehr in 1985 was less than that shipped in 1979, 1980 and 1981. The union names two customers and two foreign competitors that hurt Wehr's business because of import competition.

Findings in the investigation did not substantiate that increased imports contributed importantly to worker separations. The Department's

investigation covered the period from 1984 through April 1986. Wehr Steel experienced both increased sales, production and employment in 1985 compared to 1984. Since the Department's findings did reflect reduced sales and production and worker separations in 1986 the Department surveyed Wehr's customers for the January to April periods in 1985 and 1986. That survey showed that Wehr's customers reduced their aggregate purchases of imports during this period. Further, U.S. aggregate imports of steel castings decreased absolutely and relative to domestic shipments in 1985 compared to 1984 and decreased absolutely in the first six months of 1986 compared to the same period in 1985.

Wehr's sales in 1979, 1980 and 1981 are not relevant to the subject investigation since they are outside the period applicable to the petitioners. The worker petition signed on May 28, 1986 is applicable to workers separated on or after May 28, 1985 if import impact can be substantiated. The Department generally compares sales, production, employment and U.S. aggregate imports with the immediately preceding year to determine whether the reduced sales and/or production and employment and increased import requirements set in section 222 of the Trade Act are satisfied. Section 223(b)(1) of the Trade Act provides for the certification of workers laid off up to one year prior to the date of the petition.

While a labor dispute is mentioned in the determination, the decision is based on facts assembled in the Department's investigation of Wehr's sales, production and workforce during the applicable period.

Findings in the investigative case file show that one of the two customers named by the union was included in the Department's survey while the other was not surveyed since it had increased purchases from Wehr for the applicable time period. Company officials indicated that of the two foreign competitors mentioned by the union, one was a competitor up until 1983 while the other was a recent competitor. Sales of steel castings by the foreign competitors to Wehr's customers would be included as import purchases in the Department's survey.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of November 1986.

Barbara Ann Farmer,

Acting Director, Office of Program Management, UIS.

[FR Doc. 86-27367 Filed 12-4-86; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Nevada State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(e) of the Act and 29 CFR Part 1902. On January 4, 1974, notice was published in the **Federal Register** (39 FR 1008) of the approval of the Nevada plan and the adoption of Subpart W to Part 1952 of Title 29 containing the decision. The Nevada plan provides for the adoption of Federal standards as State standards by reference.

By letter dated August 15, 1986, from Nancy C. Barnhart to Ray Owen and incorporated as part of the plan, the State submitted State standard revisions identical to 29 CFR 1910.1047, Ethylene Oxide, Labeling Requirements (October 11, 1985, 50 FR 4149); 29 CFR 1910.1200 Hazard Communication (Interim Final Rule and Lubricating Oils) (November 27, 1985, 50 FR 48750 and December 20, 1985, 50 FR 51852). These standards are contained in the Division of Occupational Safety and Health Standards for General Industry. The subject standards, 29 CFR 1910.1047, Ethylene Oxide (50 FR 4149) and 29 CFR 1910.1200, Hazard Communication (50 FR 48750 and 50 FR 51852) were adopted by reference on January 8, 1986, November 27, 1985 and December 20, 1985 pursuant to Nevada State law, section 618.295.

2. Decision

Having reviewed the State submission in comparison with Federal standard, it has been determined that the standards are identical to the Federal standards and accordingly are approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 450 Golden Gate Avenue, Room 11349, San Francisco, California 94102; and Director, Division of Occupational Safety and Health, 1370 South Curry Street, Carson City, Nevada 89710, and Directorate of Federal Compliance and State Programs, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Nevada State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with procedural requirements of State law and further participation would be unnecessary.

This decision is effective December 5, 1986.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at San Francisco, California this 27th day of October, 1986.

Russell B. Swanson,

Regional Administrator.

[FR Doc. 86-27362 Filed 12-4-86; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 86-138; Exemption Application No. D-6180 et al.]

Grant of Individual Exemptions; Prince Employee Retirement Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Prince Employee Retirement Trust and Prince Machine Employee Retirement Trust (the Plans) Located in Holland, Michigan

[Prohibited Transaction Exemption 86–138; Exemption Application No. D–6180]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loan by Prince Employee Retirement Trust of the lesser of $3,115,000 or 25% of its assets and by Prince Machine Employee Retirement Trust of the lesser of $885,000 or 25% of its assets (the Loans) to Prince Corporation, a party in interest with respect to the Plans, provided that the terms of the proposed Loans are not less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated third party at the time of the making of the proposed Loans.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 19, 1986 at 51 FR 33314.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

St. Paul Radiology Profit Sharing Plan (the Plan) Located in St. Paul, MN

[Prohibited Transaction Exemption 86–139; Exemption Application No. D–6494]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the purchase from Dr. Clifford G. Leach (Dr. Leach) by the segregated account in the Plan of Dr. Leach of 6000 shares of common stock (the Stock) of Medical Imaging Centers of America, Inc. for $19,500, provided that the price is no more than the fair market value of the Stock as of the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 10, 1986 at 51 FR 36495.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Defined Benefit Plan of Linc Handley, Inc. (the Plan) Located in Soledad, California

[Prohibited Transaction Exemption 86–140; Exemption Application No. D–6592]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase by the Plan of several promissory notes (the Notes) secured by first deeds of trust from Linc Handley, Inc. (the Employer), the Plan sponsor, provided the purchase prices for the Notes are no more than the fair market value of the Notes on the date of sale.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 10, 1986 at 51 FR 36498.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Blanton & Co., Architects and Engineers Profit Sharing Plan and Trust Agreement (the Plan) Located in Tucson, Arizona

[Prohibited Transaction Exemption 86–141; Exemption Application No. D–6665]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of a certain parcel of unimproved real property (the Property) to Blanton & Co. Architects and Engineers (the Employer), the sponsor of the Plan provided that the sales price is not less than the fair market value of the Property on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 12, 1986 at 51 FR 32551.

Written Comments: The Department received a comment from the applicant in response to questions raised by the Department regarding expenses which the Plan may have incurred with respect

[1] Because Lincoln Handley, the sole shareholder of the Employer, and Kathleen Handley, his wife, are the sole Plan participants, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

to the Property since the acquisition of the Property by the Plan. The applicant states that the Plan has paid real property taxes in the amount of $2,259.98 and property improvement assessments in the amount of $2,211.13, for a total of $4,471.11 in expenses for the period in which the Plan has held the Property. The Employer represents that the Plan will be reimbursed in the amount of $4,471.11, as additional rent for the Employer's use of the Property, at the time of the purchase of the Property from the Plan.

After consideration of the entire record, the Department has determined to grant the exemption.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Brookwood Orthopedic Associates, P.C. Money Purchase Pension Plan and Brookwood Orthopedic Associates, P.C. Profit Sharing Plan (the Plans) Located in Birmingham, Alabama

[Prohibited Transaction Exemption 86-142; Exemption Application Nos. D-6666 & D-6667]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) a loan by the Plans (the Loan) to Jones and Brackin Real Estate, a partnership which is a party in interest with respect to the Plans; and (2) the personal guarantees of the Loan by Bruce Brackin, M.D. and Dewey H. Jones, M.D., parties in interest with respect to the Plans; provided that all terms of the Loan are at least as favorable to the Plans as the Plans could obtain in an arm's length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 10, 1986 at 51 FR 36496.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

John D. Latendresse Money Purchase Pension Plan (the Plan) Located in Washington, DC

[Prohibited Transaction Exemption 86-143; Exemption Application No. D-6761]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale (the Sale) of a certain parcel of real property (the Property) by the Plan to John D. Latendresse, M.D., a party in interest with respect to the Plan, provided that the consideration paid for the Property is not less than the greater of either $125,000 or the fair market value of the Property on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 10, 1986 at 51 FR 36497.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of December, 1986.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration.

[FR Doc. 86-27396 Filed 12-4-86; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-5612] et al.

Proposed Exemptions; Retirement Plan for Employees of Hemphill-Wells Company (the plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by

the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Retirement Plan for Employees of Hemphill-Wells Co. (the Plan) Located in Lubbock, TX

[Application No. D–5612]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the leasing from July 1, 1984 through April 30, 1986 of certain parcels of real property by the Plan to Hemphill-Wells Company (the Employer) provided all of the terms of the leases were as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

Effective Date: If granted, the proposed exemption will be effective July 1, 1984 through April 30, 1986.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with 268 active participants and 146 beneficiaries receiving payments. As of February 1, 1984, the total number of plan participants was 414. The Plan had total assets of $4,086,540 as of October 1, 1984. The trustee of the Plan is Interfirst Bank Dallas, N.A. (the Bank). The Bank represents that there is no relationship or involvement between it and the Employer and the Bank has served as the Plan's independent fiduciary since January of 1973. The Bank also represents that it is an independent trustee. The Bank owns no stock in the Employer nor has any other connection, therewith. There are no common officers nor directors of either entity. The Employer, a Texas corporation, is a retail clothing store.

2. In 1971, the Employer contributed certain real property located at lots 8, 9 and 10, Block 132, Original Town, City of Lubbock, Lubbock County, Texas (the Property). On January 31, 1973, the Plan, entered into a lease agreement with the Employer for Lots 8 and 9 of the Property (Lease I). The term of Lease I was from February 1, 1973, through April 30, 1986. On January 30, 1973, the Plan entered into a lease agreement with the Employer for Lot 10 of the Property (Lease II). The term of Lease II was from February 1, 1973, through April 30, 1986.[1]

3. The applicant requests an exemption for Lease I and Lease II (collectively, the Leases) from July 1, 1984 through April 30, 1986. The applicant represents that the Plan had attempted to sell the Property, but had been unable to do so. Therefore, an exemption is requested for the Leases from July 1, 1984 until April 30, 1986.

4. The rental rate for the Leases was $1,082.50 per month or $12,990 per annum. In addition, the Employer was required to pay the property taxes, insurance and maintenance of the Property. (Originally, the Leases contained an option to renew. The Employer relinquished any rights to exercise such option.)

5. On October 13, 1983, an independent appraisal of the Property was performed by Tommy Cantrell, MAI (the Appraiser), which established the fair market value of the Property at $200,000. On September 19, 1984, the Appraiser revised his valuation of the Property, and determined that the fair market value of the Property was $160,000 as of that date. The Appraiser further determined that the $12,990 per annum triple net lease represented the fair market rental value of the Property as of November 11, 1985. The Bank represents that it knew as of July 1, 1984 that fair market rental rates were being paid under the Leases based upon the existing market conditions in the Lubbock, Texas area and its knowledge of the rental incomes being received in this area. As trustee, the Bank did not wait until June 30, 1984 to begin considering the effect of section 414 of the Act. The Bank made continuing efforts to sell the Property to unrelated parties. After the expiration of the Leases on April 30, 1986, the Property was sold to an unrelated third party for the sum of $100,000 in cash.

6. The Bank represents that the continuation of the Leases was in the interest of and protective of the Plan and its participants and beneficiaries. It states that if the Leases had been cancelled, there would have been a negative cash flow to the Plan from this investment.

7. In summary, the applicant represents that the proposed exemption meets the statutory criteria of section 408(a) of the Act because:

(1) The Plan was in a more advantageous position by continuing the Leases for the duration of the original terms because if the Leases were cancelled, the Plan would have experienced a negative cash flow;

(2) The Plan was receiving a fair market value rental rate; and

(3) The Bank determined that the continuation of the Leases was in the interests of and protective of the Plan and its participants and beneficiaries.

For Further Information Contract: Linda M. Hamilton of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Commercial Metals Co. Profit Sharing Plan (the Plan) Located in Dallas, TX

[Application No. D–6453]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale of certain real and personal property by the Plan to Commercial Metals Company (the Employer), provided that the terms of

[1] The applicant represents that Lease I and Lease II did not become violations of the Act until after June 30, 1984 because they were covered by section 414(c) of the Act. The Department expresses no opinion as to the applicability of section 414 in this instance.

the transactions are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan with 1,357 participants and assets of $35,264,252 as of August 31, 1985. The Plan's trustee is the InterFirst Bank N.A. (the Trustee). The Plan owns a tract of improved real property measuring approximately 380 by 400 feet situated in the City of Beaumont, Jefferson County, Texas (Beaumont Property). The improvement consists of a wood frame single family dwelling, which is in dilapidated condition. The Beaumont Property was leased by the Plan to the Employer from May 14, 1975 until August 31, 1984. The applicant recognizes that the lease of the Beaumont Property was prohibited under the Act and accordingly has filed an excise tax return with the Internal Revenue Service.

2. The Plan also owns, through a wholly owned subsidiary, Dallas Standard Equipment Company (Dallas), two pieces of equipment which it leased to the Employer. The equipment consists of one American model 5299 crawler lifting crane (Crane A) and one American hoist crawler model 599C lifting crane (Crane B; collectively, the Cranes). Crane A was acquired in September 1973, at a cost of $79,132.81 from an unrelated third party. On September 19, 1973, Dallas and the Employer entered into a lease agreement, whereby Dallas agreed to lease Crane A to the Employer for a 10 year term at a monthly rental of $1,100. Subsequent to the expiration of the lease, Crane A was not used by the Employer.

Crane B was acquired in December 1973, at a cost of $75,782.46, from an unrelated third party. On January 15, 1974, Dallas and the Employer entered into a lease agreement, whereby Dallas agreed to lease Crane B to the Employer for a 10 year term at monthly rental of $1,100. Subsequent to the expiration of the lease, Crane B was not used by the Employer.

The applicant represents that because both Cranes were leased to the Employer prior to June 30, 1974, the leases qualified for relief under the transitional rules provided in section 414 of the Act.[2]

[2] In this proposed exemption the Department expresses no opinion as to the applicability of section 414 of the Act to the leasing of the Cranes.

3. The Trustee proposes to sell the Beaumont Property and the Cranes to the Employer in a one-time transaction for $265,000 in cash. The Plan will pay no commissions or fees with respect to the proposed sales.

The trustee had two appraisals performed on the Beaumont Property. Mr. Jimmy W. Bishop, and MAI appraiser, with the firm of Bishop & Company, valued the Beaumont Property as having a fair market value of $105,000 as of January 21, 1985. Mr. Jack C. Aulbaugh, an MAI appraiser, with the firm of Jack C. Aulbaugh, Inc., valued the Beaumont Property as having a fair market value of $89,000 as of May 1, 1984. Also, appraisals were performed on the Cranes by R. Bruce Mercer of United States Crane Certification Bureau, Inc., who placed a value of $92,000 on Crane A and $76,000 on Crane B, as of September 11, 1984.

4. The Trustee proposes to sell the Beaumont Property to the Employer because it has an undesirable location and is a small tract of land. The Beaumont Property is bordered by a railroad switch yard and one of the Employer's scrap metal processing and distribution plants. It is located approximately 1,000 feet off a major road at the termination of a poorly paved secondary street. In determining the fair market value of the Beaumont Property, the Trustee obtained and reviewed the appraisals of the Beaumont Property. The Trustee attempted to obtain third party offers by listing the Beaumont Property with Hare, Burns & Osborne, however since August 3, 1984 no offers have been received.

The Trustee has agreed to sell the Beaumont Property to the Employer at a price based on its appraised value. After arm's-length negotiations with the Trustee, the Employer agreed to purchase the Beaumont property for $97,000 in cash. Based upon all available information, the Trustee believes the sales price negotiated for the Beaumont Property to be its fair market value. The applicant represents that holding the Beaumont Property would be detrimental to the participants and beneficiaries of the Plan because of the absence of any yield on the property. Further, cash proceeds from the proposed sale could be invested by the Plan in a better yielding, more secure medium.

5. The Trustee proposes to sell the Cranes to the Employer because of their poor condition and limited marketability. The Trustee has received reports from unrelated parties familiar with the crane industry that the market is currently inactive with regard to the sale of used crawler cranes. Because of the limited market for such cranes, selling them to third parties would require transportation to a central location out of state and sale at auction. Holding the Cranes would be detrimental to the participants and beneficiaries of the Plan because of the absence of yield on the Cranes. The Cranes cannot be used in their present condition, and the Trustee does not consider the necessary repair costs to be justified. Cash proceeds from the proposed sales could be invested in a better yielding more secure medium than depreciating equipment. Rather than incur the additional transportation and sale expenses necessary to attempt a sale to third parties and risk a low sales price at auction, the Trustee chose to negotiate the Cranes sale to the Employer at a price based on their appraised values. In determining the fair market value of the Cranes, the Trustee reviewed the Cranes' appraisal. After arm's-length negotiations with the Trustee, the Employer agreed to buy the Cranes for a $168,000 in cash. The Trustee considers the sales price negotiated for the Cranes to be the fair market value of the equipment.

In conclusion, the Trustee believes that the proposed sales of the Beaumont Property and the Cranes are in the best interests of the Plan's participants and beneficiaries and protective of their rights.

6. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) They will be one-time transactions for cash;

(b) The Trustee has determined that the proposed transactions are appropriate and suitable for the Plan; and

(c) The terms of the transactions are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

For Further Information Contact: Alan Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Marine Hills Company, Inc. Profit Sharing Plan and Trust (the Plan) Located in Federal Way, WA

[Application No. 3-6828]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Revenue

Procedure 75-26 (1975 C.B. 772). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed purchase by the Plan of real estate contracts (the Contracts) from Marine Hills Company, Inc., (the Employer) provided that the purchase prices of the Contracts are no more than their fair market value as of the dates of purchase and that no more than 25% of the Plan's assets are invested in the Contracts.[3]

Summary of Facts and Representations

1. The Plan is a profit sharing plan with one participant and assets of $453,793 as of December 31, 1985. Norval H. and Mary S. Latimer serve as the Plan's trustees.

2. The applicant requests an exemption to permit the Employer to sell the Contracts to the Plan in order to increase the Plan's rate of return on its investments. The applicant represents that the purchase of the Contracts will allow the Plan to increase its rate of return.

3. The existing Contracts will mature within four years. No Contract will be purchased by the Plan if its maturity date is more than five years beyond the purchase date. Contracts will be secured by first trust deeds in the underlying properties. The Employer will repurchase any Contract which is in default for 60 days. The Plan will not purchase any Contracts under which the obligor is a party in interest with respect to the Plan, or if the purchase would result in more than 25% of the Plan's assets being invested in Contracts.

4. First Security Bank (the Bank) of Tacoma, Washington has been appointed to act as the Plan's independent fiduciary. The Bank will underwrite and approve Contracts submitted for purchase by the Plan, collect the payments due under the Contracts and monitor compliance with their terms, and arrange for the repurchase of any Contract more than 60 days in default. The Bank will approve purchases of a Contract only if: (a) Payments under the Contract have been current for the prior 6 months; (b) the Loan to value ratio of the Contract is no more than 75%; (c) the maturity date of the Contract is no more than 60 months from the Contract's purchase date; and (d) a current credit report as well as a copy of the original credit application is supplied for the obligor under the Contract.

5. The Bank will determine the discount to be applied to each Contract in light of then-current market conditions. It is represented that typical interest rates on the Contracts will be between 9% and 12% and that the yield to the Plan will be between 13% and 18%.[4]

6. The applicant represents that in the event any additional employees of the Employer become participants in the Plan, their separate account balances will not be invested in any Contracts unless specifically directed to do so by the participant in writing to the Trustees.

7. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because: (a) The Contracts will provide a higher rate of return on the Plan's investments; (b) the Contracts will mature within five years from the date of purchase; (c) the Employer will repurchase any Contract in default for more than 60 days; and (d) Mr. Latimer, as the sole Plan participant, desires that the transactions be consummated, and will be the only participant to be affected by the transactions.

Notice to Interested Persons

Because Mr. Latimer is the applicant as well as the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provision of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of December, 1986.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 86-27397 Filed 12-4-86; 8:45 am]

BILLING CODE 4510-29-M

[3] Since Norval H. Latimer is the sole shareholder of the Employer and is the sole Plan participant, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[4] The applicant represents that the proposed sales will not cause the contribution limitations imposed by section 415 of the Code to be exceeded, and therefore, will not result in the Plan's disqualification.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-15438; 812-6519]

Banca della Svizzera Italiana et al.; Application

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Banca dell Svizzera Italiana ("BSI") and BSI (Delaware) Inc. ("BSI Delaware").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicants seek an order to permit BSI Delaware to issue and sell commercial paper and other debt securities in the United States unconditionally guaranteed by BSI and to permit BSI to directly sell such securities.

Filing Date: The application was filed on October 31, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested persons may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 22, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. BSI, Via M. Magatti 2, CH-6901 Lugano, Switzerland, BSI Delaware, 1209 Orange Street, Wilmington, Delaware 19801.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272-3033 or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. BSI is a Swiss bank incorporated in the canton of Ticino, Switzerland in 1873. On the basis of total assets at December 31, 1985, BSI ranked 11th among all banks in the Confederation of Switzerland. As a Swiss bank, BSI is subject to regulation under the Swiss Federal Law of Banks and Savings Banks of November 8, 1935/March 11, 1971 and its Implementing Ordinance of May 17, 1972, as amended on December 1, 1980. These regulations pertain to annual audits, capital requirements and liquidity requirements and are administered by the Federal Banking Commission of Switzerland and the Swiss National Bank.

2. BSI Delaware is a corporation organized under the laws of the State of Delaware, and is wholly-owned by BSI. BSI Delaware was established for the sole purpose of obtaining funds in the United States commercial paper market for use by BSI.

3. BSI presently proposes to issue and sell through BSI Delaware unsecured prime quality commercial paper notes ("Notes"), which will be unconditionally guaranteed by BSI. The Notes will (1) have maturities not exceeding 270 days, (2) be denominated in United States dollars, (3) be used to finance or refinance BSI's current transactions and (4) be issued in minimum denominations of $100,000. It is presently intended that not in excess of $200 million of Notes will be outstanding at any time. The Notes will not have any provisions for renewal at the option of BSI Delaware or the holders thereof or for automatic roll-over. Although there is no present intent to do so, BSI Delaware may issue and sell in the United States debt securities other than the Notes, which will be unconditionally guaranteed by BSI, and BSI may sell its debt securities directly in the United States ("Future Securities").

4. The Notes and Future Securities issued by BSI Delaware will rank *pari passu* among themselves, equally with all other unsecured, unsubordinated indebtedness of BSI Delaware, prior to any subordinated indebtedness of BSI Delaware and BSI Delaware's capital stock. BSI's guarantee on the Notes and Future Securities of BSI Delaware will rank equally with all other unsecured, unsubordinated indebtedness of BSI and prior to any subordinated indebtedness of BSI and BSI's capital stock. The Notes will be issued and sold without registration under the Securities Act of 1933 ("1933 Act"), in reliance upon an opinion of special legal counsel in the United States that the offer and sale of the Notes will qualify for the exemption from such registration afforded by section 3(a)(3) of the 1933 Act. Any Future Securities will be offered pursuant to a registration statement under the 1933 Act or an exemption therefrom. The Notes and any Future Securities will have received, prior to issuance, one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization, and special legal counsel in the United States shall certify the receipt of such rating; however, no such rating shall be obtained with respect to any such issue if, in the opinion of special legal counsel in the United States, an exemption from registration is available under section 4(2) of the 1933 Act.

5. The Notes will be sold to one or more commercial paper dealers in the United States which, as agent or principal, will offer or reoffer them to investors in the United States. Applicants will secure an undertaking from each such dealer that the Notes will not be advertised or otherwise offered for sale to the general public, but will be sold only to institutional investors and other purchasers of the type that normally participate in the commercial paper market.

6. BSI Delaware has appointed The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware, as its agent for service of process. BSI will appoint an agent in New York, NY to accept service of process in any action based on BSI's guarantee on the Notes and instituted in any New York State or United States Federal court in The City of New York by a holder of the Notes. BSI will expressly accept the jurisdiction of an appropriate New York State court or United States Federal court in The City of New York in respect of any such action based on the guarantee by BSI of the Notes. In connection with any Future Securities offered in the United States, BSI and BSI Delaware will appoint an agent to accept service of process in any action based on such securities instituted in an appropriate State or Federal court by any holder of such securities. BSI will expressly accept the jurisdiction of any State or Federal court which would have jurisdiction because of the manner of offering of the Notes or Future Securities or otherwise. Such appointment by BSI and BSI Delaware of an authorized agent and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes and any Future Securities have been paid.

7. Applicants state that the requested exemption is necessary or appropriate

in the public interest because it will further the purposes of the International Banking Act of 1978 and expand investment opportunities for United States investors. Applicants also state that such exemption is consistent with the protection of investors who will still have the protection afforded by both Swiss regulations and United States laws governing any securities issued.

Finally, Applicants assert that the exemption is consistent with the purposes of the 1940 Act because commercial banks, such as BSI, were not within the intended purview of the 1940 Act, and BSI Delaware is merely a financing conduit for BSI and its debt securities will by unconditionally guaranteed by BSI.

Applicants' Conditions

If the requested is granted, Applicants expressly consent to the following conditions:

(1) Applicants will secure from each commercial paper dealer an undertaking to provide each offeree of the Notes, prior to any sale of Notes to such offeree, a memorandum describing the business and containing the most recent publicly available fiscal year-end audited financial statements of BSI. Applicants will provide or cause to be provided to such dealers information sufficient to prepare such memoranda, which memoranda will (1) be at least as comprehensive as those customarily used in commercial paper offerings in the United States, (2) include a brief paragraph highlighting material differences between Swiss and united States generally accepted accounting principles applicable to commercial banks sch as BSI, and (3) be updated periodically to relfect material changes in the financial status of BSI.

(2) Any Future Securities offered in the United States will be done on the basis of disclosure documents at least as comprehensive as those used in connection with the Notes. Such disclosure documents will be provided to each offeree who has indicated an interest in such securities, prior to any sale of such securities, except that in the case of an offering made pursuant to a 1933 Act registration statement, the disclosure documents will be provided in such manner as may be required by the 1933 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Dated: November 26, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-27374 Filed 12-4-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15443; 812-6406]

Monarch Life Insurance Company et al.; Application

November 28, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

Applicants: Monarch Life Insurance Company ("Monarch"), Variable Account Al of Monarch ("Account Al"), Variable Account Bl of Monarch ("Account Bl"), The Fidelity Variable Account of Monarch ("Fidelity Account") (the three accounts, collectively, "Variable Accounts"), and Monarch Resources, Inc.

Relevant 1940 Act Sections and Rules: Exemption requested under section 6(c) of the Act from sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2), 27(d), and 27(f) of the Act, and Rules 6e-2 and 22c-1 thereunder.

Summary of Application: In connection with certain single premium variable life insurance contracts to be issued through the Variable Accounts, Applicants seek the relief necessary to permit: (1) The deduction of a surrender charge under a contingent deferred sales local ("CDSL") structure; (2) deductions from each contract's investment base for cost of insurance, first year administrative, and state premium tax charges; (3) deductions from the assets of the Variable Account for minimum death benefit risk charges; and (4) partial withdrawal rights (and certain other features) that affect the duration of a contract's minimum death benefit guarantee.

Filing Date: The application was filed on June 10, 1986, and amended on October 29, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 23, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Monarch Life Insurance Company and the Variable Accounts, 1250 State Street, Spingfield, Mass. 01133.

FOR FURTHER INFORMATION CONTACT: Brian M. Kaplowitz, Special Counsel, at (202) 272-2061, or Joseph R. Fleming, Attorney, at (202) 272-3017.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations and Arguments

1. Monarch is planning to issue certain single premium variable life insurnace contracts through its three Variable Accounts, each of which is registered as a unit investment trust under the Act.

2. The Contracts will be distributed through Monarch Resources, Inc. ("MRI"), a wholly-owned subsidiary of Monarch Capital Corporation. MRI, a broker/dealer registered under the Securities Exchange Act of 1934, will act as the principal underwriter of the Contracts. It intends to enter into sales agreements with various organizations through which applications for the Contracts will be solicited by registered representatives of broker/dealers.

3. Account A1 will invest in portfolios of the Merrill Lynch Income Series Fund, Inc.; Account B1 will invest in two portfolios of the Oppenheimer Variable Account Funds as well as three portfolios of the Oppenheimer Zero Coupon U.S. Treasuries Trust, Series A and B; and Fidelity Account will invest in five portfolios of the Variable Insurance Products Fund.

4. Each Contract will provide life insurance coverage on two insureds named in the Contract (collectively "insureds" and individually "insured"). If there are no Contract loans and no partial withdrawals, coverage will remain in force for the lifetime of the insureds, regardless of the Variable Accounts' investment experience, and each Contract will provide a minimum guaranteed death benefit equal to the Contract's face amount. The Contract will provide for a death benefit equal to the greater of the Contract's face amount or the variable insurance amount. The Contract's death benefit is payable upon the death of the last surviving insured.

5. There will be no charges or deductions made from a single premium prior to allocation to a Variable Account's investment divisions. After allocation, Contract benefits will be determined from a Contract's

"Investment Base", which is the amount available for investment under the Contract. Initially, the Investment Base will equal the gross single premium paid. Thereafter, the Investment Base will be adjusted to reflect the net rate of return of the chosen investment divisions of the Account (on a daily basis), charges deducted from the Investment Base, any Contract loans, loan repayments and partial withdrawals. The net rate of return for the investment divisions will equal the return on the underlying investment vehicles, less certain asset charges deducted from the Variable Account, including charges to cover mortality and expense risk, guaranteed minimum death benefit risk, and annual administrative expenses. Charges will also be deducted from the Investment Base on each Contract processing date for mortality costs and for first year administrative expenses and premium taxes.

6. The Contract may be surrendered at any time for its net cash surrender value. The net cash surrender value on any day will equal the Contract's Investment Base on that date, less any applicable surrender charge, less a pro-rata portion of the periodic charges that would be deducted on the next Contract processing date, and less any net loan cost.

7. Monarch will offer Contractowners a partial withdrawal right. Under this provision, after the first Contract year and up to Contract years 7–12 (the latter depending on the average issue age of the two insureds) Contractowners may withdraw, within limits, part of the Contract's net cash surrender value. The contract's Investment Base and net cash surrender value will be reduced by the amount of the withdrawal on the date of withdrawal. There are no surrender charges or other fees for such withdrawals. At the time of a partial withdrawal, the Contract's face dollar amount will not be reduced as a result of the withdrawal, but the period for which Monarch will provide the minimum death benefit guarantee, regardless of actual investment experience, will be reduced to reflect the partial withdrawal. The new guarantee period will be calculated from a formula which takes into account the Contract year, the face amount of the Contract and the amount of its fixed base on the contract processing date. After the end of the new guarantee period, the Contract will stay in force so long as the Investment Base is greater than zero, and while it is in force will still provide a death benefit equal to the greater of the face amount or the Variable Insurance Amount. If the Investment Base becomes zero, the Contract will terminate.

8. Two years following the last contract year in which a partial withdrawal is permitted, if the Contract is in force and the guarantee period is less than life, the face amount of a Contract will be reduced and the guarantee period will be extended. The face amount will be reduced to the amount that the Contract's fixed base would support for the life of the last surviving insured and the guarantee period will be extended to life, but the face amount will never be reduced below the minimum amount required to keep the Contract qualified as life insurance under federal income tax law.

9. The Contract also allows additional payments, subject to minimum and maximum limits set forth in the Contract, during the first five Contract years if both insureds are living. Acceptance of additional payments may be subject to evidence of insurability satisfactory ot Monarch. When received and accepted, additional payments will increase the Investment Base, the net cash surrender value and the fixed base by the amount of payment and will be reflected in the variable insurance amount. If no partial withdrawals have been made and no loans are outstanding, additional payments will cause the Contract's face amount to increase. The amount of the increase will depend on the amount of the payment and the year in which it is accepted. If Contract loans are outstanding, additional payments will be applied first toward repayment of these loans unless othewise requested. If partial withdrawals have been made and the guarantee period is less than for the life of the last surviving insured, any payment made will be applied first to increase the guarantee period to the extent that Federal tax law does not require an increase in the face amount. All, or any portion of, additional payments not applied to extend the guarantee period will be used to increase the face amount of a Contract.

Surrender Charge

10. Applicants seek relief from sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), 27(D), 27(f) and Rules 6e–2 and 22c–1.

11. If the owner surrenders the Contract for cancellation before the Contract's sixth anniversary, a surrender charge ("CDSL") is deducted from the Investment Base in determining the net cash surrender value payable. Like other sales loads, the CDSL is designed to compensate Applicants for expenses associated with the Contract, including commissions paid to sales personnel, promotional expenses, and sales administration expenses. This charge is 6% of the sum of the single premium and any additional payments during the first six Contract years. The CDSL is deducted only upon a voluntary total surrender of the Contract. It is not imposed in connection with a cancellation of the Contract to the "free-look" right, a transfer between subaccounts, a partial withdrawal, a conversion, or a payment of the death benefit.

12. Applicants submit that imposition of a charge in the form of a contingent deferred charge is much more favorable to the Contractowners than a charge that is deducted from premiums. First, as the Commission has recognized in authorizing deferred sales loads for variable annuity contracts, a deferred load is more advantageous to investors than a front-end load because the amount of investors' money available for investment is not reduced as in the case of a front-end load. *See* Release No. IC–13048 (proposal of Rule 6c–8). Second, the total amount of the surrender charge under Applicants' Contracts is no higher than that permitted by Rule 6e–2(b)(13) for sales loads and, for Contractowners who do not surrender during the early Contract years, the charge is lower than it would be if the charges were taken as front-end deductions from premium payments.

13. Every Contractowner benefits from the fact that a portion of the charges is assessed only upon surrender. Contractowners who do not surrender during the first six policy years pay fewer dollars in charges than would be paid if surrender charges were to be deducted entirely from premiums. Contractowners who surrender prior to the sixth Contract anniversary pay no more dollars in sales load than they would if the load were deducted from premiums, and they have been advantaged because the amount of their investment in the Account was not reduced as it would have been had the charges been deducted from premiums.

14. All Contractowners, including those who surrender early, will benefit because the mortality cost deducted periodically from the amounts credited to the account will be lower than it would have been had all charges been deducted from premium payments, because a deferred load results in a decrease in the net amount at risk and therefore lower cost of insurance charges. Furthermore, every Contractowner receives insurance protection on the insureds without incurring the larger charges that would

be incurred if a front-end sales load were imposed. In addition, no deferred charge is deducted from the death benefit payable under the Contracts.

15. Deferring the imposition of a sales charge in no way restricts the Contractowner from receiving his or her proportionate share of the value of the account on redemption. Rather, the surrender charge, if applicable, merely is deducted at the time of redemption in determining that proportionate share instead of being deducted from purchase payments. The surrender charge merely defers the timing of the imposition of this charge and makes the charge contingent upon an event which might never occur. This method of assessing sales charges may result in the Contractowner's net amount invested to be increased, thus providing a benefit to the Contractowner.

Cost of Insurance Charge

16. Applicants seek relief from section 26(a)(2) and 27(c)(2), and Rule 6e–2(b)(13)(iii). Additional relief from section 27(a)(1) Rule 6e–2 for use of the 1980 CSJO Mortality Tables is also sought.

17. The cost of insurance charge will be determined by multiplying the current cost of insurance rate by the net amount at risk (*i.e.*, the death benefit minus the Investment Base) under the Contract. It will be deducted from the Investment Base quarterly in arrears.

18. The maximum cost of insurance rates under the Contracts are derived from the 1980 CSO aggregate mortality rates applicable to the husband insured and wife insured, and are always less then the better of the two rates.

19. By this method, the Contractowner avoids having a large cost of insurance charge deducted from the Contract's single premium.

20. The continual periodic deduction of this charge benefits the Contractowner more than such an initial charge because it increases the amount available for investment by the Contractowner and permits the dollar amount of the charge to vary in accordance with the investment experience of the Contractowner under the Contract.

21. The proposed amendments to Rule 6e–2 (Release No. IC–1442, March 15, 1985) would permit use of either the 1958 CSO Table or the 1980 CSO Table.

22. In general, insurance charges based on the 1980 CSO Mortality Tables are lower than those based on the 1958 CSO Mortality Table, although for certain insureds, primarily younger men and older women, the 1980 Tables specify higher charges.

First Year Administrative and State Premium Tax Charge

23. Applicants request relief from sections 26(a)(2) and 27(c)(2) of the Act and Rule 6e–2(b)(13)(iii) thereunder.

24. This charge compensates Monarch for administrative expenses associated with the issuance of a Contract and state premium taxes payable by Monarch on acceptance of a premium. Administrative expenses include processing applications, conducting medical examinations, determining insurability and the insured's risk class and establishing records relating to the Contract.

25. It will not be assessed upon issuance of the Contract nor will it be deducted from any death benefit payable under the Contract. Rather, it will be deducted quarterly on each Contract processing date during the first ten Contract years. Each deduction will equal .0815% of the Investment Base as of the previous Contract processing date.

26. The first year administrative and state premium tax change is designed so that it will not exceed the expected amount of the first year administrative expenses and the premium taxes incurred by Monarch. The level of this charge has been set at an amount which will provide revenues approximately equal to those generated if a change for first administrative expenses and premium taxes were deducted from premiums.

27. The imposition of the first year administrative and premium tax charge in this form is more advantageous than having the full amount charged at the frontend. First, all of the premiums will be invested from the time the Contract is issued. Second, the amount to be deducted for this charge is cost-based and Monarch anticipates no element of profit in this charge. Finally, Contractowner receives the full benefit of the Contract, *i.e.*, insurance protection, from the time the Contract is purchased and the Contractowner only pays this .0815% charge for the period up to the insureds' death or the Contractowner's surrender of the Contract.

Minimum Death Benefit Guarantee Risk Charge

28. Applicants request an exemption from section 26(a)(2) and 27(c)(2) of the Act and Rule 6e–2(b)(13)(iii).

29. The minimum death benefit guarantee risk charge is a daily asset charge that is intended to cover the risk Monarch assumes by providing a guarantee minimum death benefit under the Contracts. It is equivalent to an annual rate of .25% of the amounts in the Variable Accounts.

30. The risk charge is reasonable in relation to the risks assumed. The charge under the Contracts is also within the range of industry practice for comparable contracts. Applicants will maintain and make available to the SEC upon request a memorandum explaining the basis for these representations and the documents used to support them.

31. They do not believe the surrender charge under the Contracts will cover the costs associated with them, particularly the expected distribution costs.

32. Monarch has concluded that there is a reasonable likelihood that the distribution financing arrangement being used for the Contracts will benefit the Variable Accounts and Contractowners. Monarch will keep and make available to the SEC upon request a memorandum setting forth the basis for this representation.

33. The Variable Accounts will only invest in underlying funds which have undertaken to have a board of directors, a majority of whom are not interested persons of the fund, formulate and approve any plan under Rule 12b–1 under the Act to finance distribution expenses.

Partial Withdrawal Right

34. Applicant's request an exemption from Rule 6e–2(c)(1) to the extent necessary to offer the partial withdrawal right and other features described herein (*i.e.*, the ability to make additional payments, and a death benefit that reflects the investment experience only when the variable insurance amount exceeds the face amount) under the Contracts and for other, substantially similar Contracts issued by the Applicants as "variable life insurance contracts" within the meaning of Rule 6e–2.

35. The partial withdrawal right under the Contracts is not inconsistent with Rule 6e–2(c)(1), since partial withdrawals and the fact that they have an effect on a contract's minimum death benefit guarantee are specifically recognized in the definition of "minimum death benefit" in Rule 6e–2(c)(3). Under that provision, the " 'minimum deaht benefit' is the amount guaranteed by the life insurer to be paid . . . if there are no . . . partial withdrawals. . . ."

36. The effect of a partial withdrawal on the Contracts can be viewed as conversion of the Contract to the non-forfeiture option. A reduction in the period is analogous to extended term insurance, whereas the subsequent

reduction in the amount of the guarantee operates similarly to reduced paid-up insurance.

37. The partial withdrawal feature of the Contracts is intended to provide owners with a convenient way to withdraw money without affecting the amount of insurance coverage in early years and without undesirable tax consequences.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-27375 Filed 12-4-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24251]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 28, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 22, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Pennzoil Company, et al. (31-819)

Pennzoil Company, ("Pennzoil"), P.O. Box 2967, Houston, Texas 77252-2967, a Delaware corporation, and its wholly owned subsidiary, Pennzoil Products Company ("PPC"), 700 Milam, Houston, Texas 77002, a Nevada corporation, have filed an application pursuant to section 2(a)(4) of the Act for an order declaring PPC not to be a gas utility company for the purposes of the Act as a result of the transactions summarized below.

PCC was incorporated under the laws of the State of Nevada on October 14, 1986, as part of an intercorporate restructuring of Pennzoil and its subsidiaries. PPC will be primarily engaged in processing, refining and marketing of oil and gas and refined petroleum products and related businesses.

Pursuant to the intercorporate restructuring, substantially all of the assets of the Pennzoil Products Company division of Pennzoil, together with the assets and properties of the eastern division of Pennzoil's oil and gas exploration and production segment, are being transferred to PPC. The latter include a 190-mile intrastate natural gas system known as the West Virginia Utility Division ("System").

The System provides service to customers in twenty-two counties of West Virginia. It is stated that historically, the System has engaged in the gathering, purchase and sale of casinghead gas and natural gas. Because the System's wells and gathering lines are close to certain small counties in West Virginia which lack an adequate supply of gas, the System has distributed gas to residents in these counties. Some customers have laid their own lines to the well or gathering line from which they obtain gas; local leaseholders have also received amounts of gas as consideration for oil and gas leases.

The applicants state that the present retail distributing facilities of the System have been continued only because the customers served would otherwise lack and adequate supply of natural gas. The System has no municipal franchises, nor does it distribute gas directly to communities in its areas of operation under franchises.

In 1985, the System sold 5,057, 658 Mcf of natural gas, of which 4,619,500 Mcf (91.3%) consisted of natural gas sold to wholesale customers for resale. Of the natural gas sold in 1985, only 406,711 Mcf was sold to residental customers of the System and only 31,447 Mcf was sold to small commercial customers of the System.

In 1985, revenues produced by all the Pennzoil operations which will be combined to form PPC totalled $1,412,243,000. In that year, total revenues of the System were $28,718,433. Of this amount, $2,760,238 or 9.6% was derived from sales to residential customers and $201,518 or 0.7% from sales to small commercial customers. The balance resulted from sales to wholesale customers for resale. Thus, natural gas sales by the System in 1985 constituted 2.03% of the total revenues of the operations which will be combined in the newly formed PPC. Sales to residential and to small commercial customers by the System accounted for 2.03% and 0.20%, respectively, of such total revenues. On a *pro forma* basis, revenues of PPC from retail gas sales should make up less than 0.25% of the total revenues of PPC in the future.

New England Energy Incorporated (70-7055)

New England Energy Incorporated ("NEEI"), 25 Research Drive, Westborough, Massachusetts 01582, the fuel supply subsidiary of New England Electric System ("NEES"), a registered holding company, has filed a post-effective amendment to its previously filed application pursuant to Sections 9(a) and 10 of the Act.

Since October 1984, NEEI has engaged in various activities relating to fuel supply for NEES system, including participation in ventures for exploration, development and production of oil and gas, the conversion of such production and the sale of fuel oil to its affiliate, New England Power Company.

NEEI seeks authorization to contribute up to $45 million during 1987 to its partnership with Samedan Oil Corporation, a subsidiary of Noble Affiliates, for exploration and development of oil and gas properties acquired through December 31, 1986. NEEI does not intend to participate in new oil and gas prospects initiated by Samedan after December 31, 1986. Therefore, NEEI has withdrawn its previously filed Post Effective Amendments relating to its request for authority to acquire such oil and gas reserves, which amendments were noticed on September 18, 1986 (HCAR No. 24194).

The Columbia Gas System, Inc., et al. (70-7106)

The Columbia Gas System, Inc. ("Columbia") 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and its subsidiary company, Columbia Gas Transmission Corporation ("Transmission"), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, have filed a post-effective amendment to the application-declaration in this matter pursuant to Sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rule 45 promulgated thereunder.

By orders in this proceeding dated June 7, 1985 (HCAR No. 23724) and August 30, 1985 (HCAR No. 23812), Transmission was authorized: (1) To finance its gas inventory through April 30, 1987, with up to $450 million obtained through the issuance and sale to Columbia of a secured note; (2) to issue and sell to Columbia through December 31, 1986, up to $350 million of two series of first mortgage bonds (Series A, short-term, and Series B, long-term); (3) to engage through December 31, 1986, in a prepayment program of its installment notes held by Columbia; and (4) to sell interests in the proceeds of production from certain proved reserves to a commercial bank group. Jurisdiction was reserved over proposed Direct Bank Financing as to which the record was incomplete. The proposal for Direct Bank Financing has been withdrawn.

Transmission now proposes to extend the inventory financing agreement through April 30, 1989, and to issue and sell a short-term secured inventory note to Columbia pursuant to which Transmission may borrow up to $400 million to finance Transmission's gas inventory for the calendar years 1987 and 1988. The interest rate will be the composite weighted average effective cost of Columbia's short-term transactions, currently 6.00%.

Transmission also proposes to issue and sell, and Columbia proposes to acquire, two series of first mortgage bonds aggregating up to $350 million through December 31, 1988. The short-term bonds (Series A) will continue as designed to replace the short-term borrowings from the Columbia Intrasystem Money Pool and open account advances from Columbia. These short-term bonds must be repaid in no more than one year from the date of their issuance and will bear interest which is equivalent to the composite weighted average effective cost incurred by Columbia in its short-term transactions. The new series of long-term bonds ("Series D") will provide long-term funding of Transmission's operations. They will be repaid in fifteen equal annual installments on March 31st of each year beginning March 31 of the year following issuance. The interest rate will be based upon the cost of money to Columbia. The portion of the $350 million of first mortgage bonds which will be short-term and the portion which will be long-term will be based on the nature of Transmission's needs, but the aggregate will not exceed $350 million at any one time outstanding. The bonds will be secured by a perfected first security interest in all of Transmission's property with certain limited exceptions. The security interest is subject to certain "Permitted Encumbrances."

Transmission also proposes to continue its prepayments program through December 31, 1988. The Installment Promissory Notes prepaid by Transmission will be those bearing the highest interest rate outstanding at the time of each prepayment. Interest on such indebtedness will cease upon prepayment and recommence upon reinstatement. As such funds are thereafter required for construction and other corporate purposes, it is proposed that advances be made on open account to Transmission by Columbia in such aggregate amounts not to exceed the amount of long-term indebtedness previously prepaid. The open account advances will bear interest at the same rates or rates as borne by the equivalent principal amounts of long-term indebtedness previously prepaid by Transmission but from the lowest rate payable on the indebtedness prepaid to the highest rate. Either at such time as the advances equal the aggregate amount of the indebtedness prepaid, or, in any event, not later than December 31, 1988, the indebtedness that was prepaid will be reinstated and accepted by Columbia in repayment of the outstanding open account advances.

Connecticut Yankee Atomic Power Company (70–7255)

Connecticut Yankee Atomic Power Company ("Connecticut Yankee"), Selden Street, Berlin, Connecticut 06037, a subsidiary of Northeast Utilities and of New England Electric System, both registered holding companies, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

Connecticut Yankee proposes to enter into a Remarkable Credit and Letter of Credit Agreement ("Agreement") with a syndicate of foreign banks ("Lenders") for a term of five years with up to three one-year renewal options. The Agreement establishes a revolving credit facility and a letter of credit facility (together, "Facility"). The letter of credit facility will guarantee the issuance and sale of commercial paper by Connecticut Yankee. By interim order of May 21, 1986 (HCAR No. 24101), Connecticut Yankee was authorized to retain an investment banking firm to arrange the Facility without resorting to competitive bidding. It is now requested that the proposed issuance and sale of commercial paper be excepted from the competitive bidding requirements of Rule 50, pursuant to Rule 50(a)(5).

The aggregate principal amount of loans and letters of credit under the Agreement will not exceed $90,000,000, at any one time outstanding. Each Lender will make available two-thirds of its commitment under the Agreement for assignment and delegation to other banks, which will participate in the revolving credit loans and letters of credit to the extent of their respective interest in the Facility.

Florida Gas Transmission Company (70–7314)

Florida Gas Transmission Company ("Florida Gas"), 1200 Travis, Houston, Texas 77001, has filed an application for an order declaring that it is not a "gas utility company" under section 2(a)(4) of the Act because (i) it is primarily engaged in businesses other than that of a gas utility company, and (ii) it distributes at retail only a small amount of natural or manufactured gas.

Florida Gas is a wholly owned subsidiary of Citrus Corporation ("Citrus"), which is, in turn, owned equally by Houston Natural Gas Corporation ("HNGC") and by Sonat, Inc. ("Sonat"). Florida Gas, Citrus and Sonat are Delaware corporations. HNGC is a Texas corporation and a wholly owned subsidiary of Enron Corporation ("Enron"), also a Delaware corporation. Sonat and Enron both own and operate interstate natural gas transmission facilities.

Florida Gas operates the only natural gas pipeline providing service to peninsular Florida. Florida Gas' revenues in 1984 and 1985 were $778 and $746 million, respectively, and were derived principally from direct sales to electric, utility and industrial customers, sales of gas for resale and transportation of gas for others. In 1984 and 1985, Florida Gas had operating revenues from gas sales of approximately $712 and $734 million, net income after taxes of approximately $40 and $37 million, and total assets of approximately $271 and $284 million, respectively.

Florida Gas' retail sales constituted 0.02% of its total gas sales (in terms of revenue) for 1985. Those retail sales are made exclusively under "farm tap" clause arrangements entered into with 15 rural landowners (12 in Texas and 3 in Louisiana) in exchange for right-of-way grants. Florida Gas does not engage in any distribution to any identifiable communities within geographic areas designated under franchises.

Mississippi Power & Light Company et al. (70–7325)

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered

holding company, and its electric utility subsidiary company, Mississippi Power & Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi 39205, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), and 10 of the Act.

MP&L proposes to issue and sell from time to time through December 31, 1987, and Middle South proposes to acquire, an aggregate of not in excess of 2,609,000 additional shares of MP&L's authorized but unissued common stock without nominal or par value. The common stock will be sold at $23.00 per share for an aggregate cash purchase price of $60,007,000. MP&L will use the proceeds of such sales for the financing, in part, of its phase-in costs associated with MP&L's rate order from the Mississippi Public Service Commission in connection with MP&L's allocated portion of capacity and energy of Unit No. 1 of the Grand Gulf Nuclear Electric Generating Station (estimated to be $182.9 million for the calendar year 1987), its construction program (estimated to be $53.8 million for the calendar year 1987), and for other corporate purposes.

Pennsylvania Electric Company (70–7328)

Pennsylvania Electric Company, ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, a subsidiary of General Public Utilities Corporation, a registered holding company, has filed an amendment to its application with this Commission pursuant to sections 6(b), 9(a) and 10 of the Act and Rule 50(a)(5) thereunder.

This matter was first noticed on November 20, 1986 (HCAR No. 24243), in which Penelec proposed to issue an aggregate of up to $41,000,000 principal amount of its first mortgage bonds ("New Bonds") to The Cambria County Industrial Development Authority ("Authority"). The New Bonds will be delivered to the Authority to pay the purchase price of certain pollution control facilities presently being constructed in connection with certain of Penelec's electric generating stations. The interest rate, maturity date, and the redemption, repurchase or repayment provisions will correspond to the interest rate, maturity date, and the redemption or prepayment provisions with respect to the pollution control revenue bonds ("Authority Bonds") to be issued by the Authority.

The Authority Bonds will have a term of not less than 10 and not more than 30 years, redeemable at Penelec's direction not earlier than 1991 or later that 1996. The Authority Bonds will initially bear a fixed interest rate for a period of one to seven years, and then are convertible to a capped variable rate for the remainder of the term at the option of the bondholders. Penelec now seeks alternative authority to be able to negotiate a fixed interest rate for the Authority Bonds, which will be optionally redeemable in not less than five years.

Yankee Atomic Electric Company (70–7331)

Yankee Atomic Electric Company ("Yankee Atomic"), 1671 Worcester Road, Framingham, Massachusetts 01701, an indirect subsidiary of New England Electric System and of Northeast Utilities, both registered holding companies, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) promulgated thereunder.

Yankee Atomic proposes to issue and sell from time-to-time through December 31, 1988, short-term promissory notes and commercial paper to banks and other financial institutions of up to a maximum aggregate principal amount of $25 million to be outstanding at any one time. Yankee Atomic requests, pursuant to subparagraph (a)(5) of Rule 50, that the issuance and sale of commercial paper be excepted from the competitive bidding requirements of Rule 50.

Eastern Utilities Associates (70–7332)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder.

EUA proposes to issue and sell from time-to-time through June 30, 1987, up to 1,000,000 of its common shares, par value $5 per share, in accordance with the alternative competitive bidding procedures prescribed in HCAR No. 22623 (September 2, 1982). It is stated that the timing and the exact number of additional shares to be sold will be determined in the light of market conditions and other relevant factors. The net proceeds of the sales of additional shares will be used by EUA to reduce outstanding short-term bank borrowings and for other general corporate purposes.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–27376 Filed 12–4–86; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; New Systems of Records

AGENCY: Tennessee Valley Authority.

ACTION: Notice of proposes New Privacy Act system of records.

SUMMARY: Under the Privacy Act of 1974, the Tennessee Valley Authority (TVA) proposed to establish a new system of records containing materials compiled by the Office of the Inspector General in the course of investigations of reports of fraud, waste, abuse, and other misconduct and concerns. TVA is further proposing to exempt these records from certain Privacy Act provisions pursuant to 5 U.S.C. § 552a(k)(2); in the Proposed Rules section of today's **Federal Register**, TVA is publishing proposed amendments to TVA regulations at 18 CFR 1301.24 to authorize these exemptions. The exemptions are needed because application of those provisions could alert investigation subjects to the existence or scope of investigations, disclose investigative techniques or procedures, reduce the cooperativeness of witnesses, or otherwise impair investigations.

The public is invited to comment on the proposed system.

DATES: Comments from the public must be received in writing on or before January 5, 1981. The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 60-day period before implementation of a system.

ADDRESSES: Send comments to Privacy Act Coordinator, Division of Personnel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Thomas E. Cressler II, Division of Personnel, Tennessee Valley Authority, Knoxville, Tennessee 37902, (615) 632–2170.

SUPPLEMENTARY INFORMATION: Reports on the proposed system, including an advance copy of this notice, have been provided to the President of the Senate, the Speaker of the House of Representatives, and the Director, OMB. The text of the system is set forth below.

Dated: November 28, 1986.

W.F. Willis,

General Manager.

Privacy Act Notice of System of Records

TVA–31

SYSTEM NAME:

OIG Investigative Records.

SYSTEM LOCATION:

Office of the Inspector General, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902. Duplicate copies of certain documents may also be located in the files of other offices and divisions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities who are or have been the subjects of investigations by the Office of the Inspector General (OIG) or who provide information in connection with such investigations, including but not limited to: employees; former employees; current or former contractors and subcontractors and their employees; consultants; and other individuals and entities which have or are seeking to obtain business or other relations with TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations, including information provided by known or anonymous complainants; information provided by the subjects of investigations; information provided by individuals or entities with whom the subjects are associated (e.g., coworkers, business associates, relatives); information provided by Federal, State, or local investigatory, law enforcement, or other Government or non-Government agencies; information provided by witnesses and confidential sources; information from public source materials; information from commercial data bases or information resources; investigative notes; summaries of telephone calls; correspondence; investigative reports or prosecutive referrals; and information about referrals for criminal prosecutions, civil proceedings, and administrative actions taken with respect to the subjects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

TVA Act, 16 USC 831b; Executive Order 10450; Executive Order 11222; Hatch Act, 5 USC 7324–7327; 28 USC 535, and Proposed Plan for the Creation, Structure, Authority and Function of the Office of Inspector General, Tennessee Valley Authority, approved by the TVA Board of Directors on October 18, 1985.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal, State, or local entity (1) in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting entity to the extent that the information is relevant to a decision on such matters or (2) in connection with any other matter properly within the jurisdiction of such other entity and related to its prosecutive, investigatory, regulatory, administrative, or other responsibilities.

To the appropriate entity, whether Federal, State, or local, in connection with its oversight or review responsibilities or authorized law enforcement activities.

To respond to a request from a Member of Congress regarding an individual, or to report to a Member on the results of investigations, audits, or other activities of OIG.

To the parties of complainants, their representatives, and impartial referees, examiners, or administrative judges in proceedings under the TVA grievance adjustment procedures, TVA Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the subjects of an investigation and their representatives in the course of TVA investigation of misconduct; to any other person or entity that has or may have information relevant to the investigation to the extent necessary to assist in the conduct of the investigation, such as to request information.

In litigation, including presentation of evidence and disclosures to opposing counsel in the course of discovery.

To a consultant, private firm, or individual who contracts or subcontracts with TVA, to the extent necessary to the performance of the contract.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant or potentially relevant information and to request information from private individuals or entities, if necessary, to acquire information pertinent to the hiring, retention, or promotion of an employee, the issuance of a security clearance, the conduct of a background or other investigation, or other matter within the purposes of this system of records.

POLICIES AND PRACTICES FOR STORING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in automated data storage devices, hard-copy printouts, and in file folders.

RETRIEVABILITY

Records are indexed and retrieved by individual name or case file number.

SAFEGUARDS:

Access to and use of records is limited to authorized staff in OIG and to other authorized officials and employees of TVA on a need-to-know basis as determined by OIG management. Security will be provided by physical, administrative, and computer system safeguards. Files will be kept in secured facilities not accessible to unauthorized individuals.

RETENTION AND DISPOSAL:

These records are retained in accordance with TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Tennessee Valley Authority, Knoxville, Tennessee 37902

NOTIFICATION PROCEDURE:

This system of records is exempt from this requirement pursuant to section 3(k)(2) of the Privacy Act of 1974 (5 USC 552a(k)(2)) and TVA regulations at 18 CFR 1301.24.

RECORD ACCESS PROCEDURE:

This system of records is exempt from this requirement pursuant to section 3(k)(2) of the Privacy Act of 1974 (5 USC 552a(k)(2)) and TVA regulations at 18 CFR 1301.24.

CONTESTING RECORD PROCEDURES:

This system of records is exempt from this requirement pursuant to section 3(k)(2) of the Privacy Act of 1974 (5 USC 552a(k)(2)) and TVA regulations at 18 CFR 1301.24.

RECORD SOURCE CATEGORIES:

This system of records is exempt from this requirement pursuant to section 3(k)(2) of the Privacy Act of 1974 (5 USC 552a(k)(2)) and TVA regulations at 18 CFR 1301.24.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempted from subsections (c)(3); (d); (e)(1); (e)((4) (G), (H), and (I); and (f) of section 3 of the

Privacy Act of 1974 pursuant to section 3(k)(2) of the Privacy Act (5 USC 552a(k)(2)) and TVA regulations at 18 CFR 1301.24.

[FR Doc. 86-27220 Filed 12-4-86; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Coupons Under Book-Entry Safekeeping (CUBES) Program

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice of Coupons Under Book-Entry Safekeeping (CUBES) Program.

SUMMARY: This notice is being published to announce the establishment by the Department of the Treasury of a special program to permit the conversion of certain physical coupons detached from U.S. Treasury obligations, i.e., bonds and notes, to a book-entry system to be maintained and administered by the Federal Reserve Bank of New York, as fiscal agent of the United States. Under the program, depository institutions holding coupons stripped from Treasury securities will have a one-time opportunity, i.e., during the period from January 5 to, and including, April 30, 1987, to convert such coupons to a book-entry system separately established for them. Other entities wishing to convert stripped coupons must arrange to do so through a depository institution.

EFFECTIVE DATE: December 5, 1986.

FOR FURTHER INFORMATION CONTACT: Rochelle F. Granat, Attorney-Adviser, Bureau of the Public Debt, Washington, DC (202) 447-9859.

SUPPLEMENTARY INFORMATION: The Department of the Treasury, under authority of Chapter 31 of Title 31, United States Code, will implement a Coupon Under Book-Entry Safekeeping (CUBES) program beginning January 5, 1987, and ending close of business April 30, 1987. Under the program, depository institutions holding coupons stripped from physical Treasury securities will be permitted to convert them to book-entry form. Entities other than depository institutions which hold stipped Treasury coupons and which wish to convert those coupons to book-entry accounts under the CUBES program must arrange for such conversion through a depository institution.

Only stripped Treasury coupons maturing on or after *January 15, 1988,* will be eligible for conversion, excluding those having payment dates during a callable period. Conversions will be possible only during the January 5-to-April 30, 1987, time period. No coupons will be accepted for the program after April 30, 1987. Participants will be required to certify that coupons presented for conversion to book-entry were stripped prior to January 5, 1987.

The Department of the Treasury has designated the Federal Reserve Bank of New York, as fiscal agent of the United States, to be the central processing site.

Presentation of coupons for conversion under CUBES may be made only at the Reserve Bank. The acceptance of physical coupons for the CUBES program will be subject to reject or adjustment until a full verification of the submission has been made by the Federal Reserve Bank of New York and the Treasury.

CUBES will offer off-line trading of the book-entry holdings between depository institutions. Such off-line accounts will be established for all CUBES participants only at the Federal Reserve Bank of New York, acting as fiscal agent of the United States. CUBES accounts will be maintained separately from accounts held in the Treasury's STRIPS (Separate Trading of Registered Interest and Principal of Securities) program.

Participation in CUBS will require depository institutions to agree in writing to the terms and conditions of the program.

Participants will be charged a per-coupon fee of $4.00 for conversion to book-entry, as well as bear the full cost and risk associated with the delivery of the coupons to the central processing site.

Book-entry transfers under the CUBES program will be subject to the same fee schedule applicable for the transfer of other off-line Treasury book-entry securities. However, payments associated with such transfers must be settled outside the CUBES system.

Once stripped coupons have been converted to CUBES, their reconversion to physical form will not be permitted. The principal (corpus) securities from which the interest coupons have been stripped will not be accepted in CUBES.

A depository institution wishing to participate in CUBES that has not already declared its intent to do so should contact the Federal Reserve Bank of New York at (212) 720-5514 as soon as possible to obtain an information package on the program. Such institution must declare its intention to participate to that Bank no later than December 31, 1986, and should submit a completed holdings statement on the form provided in the information package.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-27564 Filed 12-4-86; 10:55 am]

BILLING CODE 4810-10-M

FEDERAL RESERVE SYSTEM

Duco Bancshares, Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 15, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Duco Bancshares, Inc.*, Villa Park, Illinois; to acquire 100 percent of the voting shares of Banill Corporation, Normal, Illinois, and thereby indirectly acquire Bank of Illinois in Normal, Normal, Illinois.

Board of Governors of the Federal Reserve System, December 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-27567 Filed 12-4-86; 12:54 pm]

BILLING CODE 6210-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 234
Friday, December 5, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

December 2, 1986.

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

DATE AND TIME: Wednesday, December 10, 1986, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Staff Director's Oral Report.

II. General Discussion on Topics of Commissioner Interest (to be decided by the Commissioners).

PERSON TO CONTACT FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division (202) 376–8312.

William H. Gillers,

Solicitor, 376–8339.

[FR Doc. 86–27404 Filed 12–2–86; 5:02 pm]

BILLING CODE 6335–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., December 2, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Conference Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Application of the Chicago Mercantile Exchange for designation as a contract market in Australian Dollar futures.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–27440 Filed 12–3–86; 11:01 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., December 2, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–27441 Filed 12–3–86; 11:01 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., December 16, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Temporary Licenses for Guaranteed Introducing Broker Applicants—final rules; Sales Practice Interpretation.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A Webb,

Secretary of the Commission.

[FR Doc. 86–27442 Filed 12–3–86; 11:01 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., December 16, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Trade Practice Reviews.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–27443 Filed 12–3–86; 11:01 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., December 16, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–27444 Filed 12–3–86; 11:01 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Tuesday, December 9, 1986, 10:00 a.m.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED: Enforcement Matter OS #3322.

The staff will brief the Commission on Enforcement Matter OS #3322.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

December 3, 1986.

[FR Doc. 86–27497 Filed 12–3–86; 1:16 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Thursday, December 11, 1986, 10:00 a.m.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: FY '87 Operating Plan.

The Commission will consider the Fiscal Year 1987 Operating Plan.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

December 3, 1986.

[FR Doc. 86–27498 Filed 12–3–86; 1:17 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Friday, December 12, 1986, 1:00 p.m.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

1. *Compliance Status Report.* The staff will brief the Commission on the status of various compliance matters.

2. *Enforcement Matter OS #4425.* The Commission will consider Enforcement Matter OS #4425.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

December 3, 1986.

[FR Doc. 86–27499 Filed 12–3–86; 1:19 pm]

BILLING CODE 6355–01–M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: December 2, 1986, 51 FR 43492.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: December 3, 1986, 10:00 a.m.

CHANGES IN THE MEETING: (1) The meeting has been changed to Hearing Room A.

(2) The following item has been added:

Item No., Docket No., and Company

CAM–3—RM79–252, Petition of Montana-Dakota Utilities Company to Reopen Order No. 99

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–27445 Filed 12–3–86; 11:28 am]

BILLING CODE 6717–02–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, December 10, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW, Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following time is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposals regarding amendments to Regulation Z (Truth in Lending) relating to certain refinancing transactions under the rescission provisions. (Proposed earlier for public comment; Docket No. R–0577).

Discussion Agenda

2. Federal Reserve Bank budgets for 1987.

3. Cost of Federal Reserve notes in 1987.

4. Any items carried forward from a previously announced meeting.

Note. This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writting to: Freedom of Information Office, Board of Governors of the Federl Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–27477 Filed 12–3–86; 11:51 am]

BILLING CODE 6210–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, December 10, 1986, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed Federal Reserve Bank salary structure adjustments.

2. Appointment of new members to the Consumer Advisory Council.

3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–27478 Filed 12–3–86; 11:51 am]

BILLING CODE 6210–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

STATUS: Open. The Council will also hold an executive session to discuss civil litigation.

TIME AND DATE: December 10–11, 1986, 9:00 a.m.

PLACE: Federal Building, 915 Second Avenue, Seattle, Washington.

MATTERS TO BE CONSIDERED:

December 10

1. Status Report on Columbia River Basin Fish Runs and Harvest Regulation.

2. Public Comment on Issue Paper on Salmon and Steelhead System Objective and Policies.

December 11

3. Bonneville Power Administration Presentation on Washington Public Power Supply System Plants Study.

4. Council Action on Petitions to Revise the Model Conservation Standards for New Commercial Buildings, to Adopt Model Conservation Standards for Existing Residential Buildings, to Reinstate Surcharge for Conversion Standards, and to Adopt Model Conservation Standards for the Direct Service Industries and Federal Agency Customers. (Petitions were filed by the Natural Resources Defense Council, the Northwest Conservation Act Coalition, and Citizens for an Adequate Supply of Energy. Copies are available upon request by calling Judy Allender at the above address and telephone numbers.)

5. Presentation and Public Comment on Bonneville Power Administration Power Work Plan.

6. Council Business.

7. Public Comment.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins at (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 86–27496 Filed 12–3–86; 1:15 pm]

BILLING CODE 0000–00–M

POSTAL RATE COMMISSION

TIME AND DATE: 2:30 p.m. on December 15, 1986.

PLACE: Conference Room, 1333 H Street, NW., Suite 300, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: To discuss the issues in Change in Service, 1986, Collect on Delivery Service, which is Dockets Nos. N86–1/MC86–3.

CONTACT PERSON FOR INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 86–27419 Filed 12–3–86; 9:43am]

BILLING CODE 7715–01–M

Corrections

Federal Register
Vol. 51, No. 234
Friday, December 5, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency-prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 61104-6204]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

Correction

In proposed rule document 86-26464 beginning on page 42273 in the issue of Monday, November 24, 1986, make the following corrections:

1. On page 42274, in the first column, in the eighth line, after "Production" insert "Index".

2. On the same page, in the third column, in the eighteenth line, "230" should read "30".

3. On page 42275, in the third column, in amendatory instruction 5, in the second line, "(iii)" should read "(ii)" and in the third line, "(ii)" should read "(iii)".

4. On page 42276, in the first column, in the eighteenth line, "allowable" should read "allocated".

5. On the same page, in the second column, in the eighteenth line, "and" should read "any".

BILLING CODE 1505-01-D

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Additions

Correction

In notice document 86-26299 beginning on page 42129 in the issue of Friday, November 21, 1986, make the following correction:

On page 42130, in the second column, under the entry "Services" insert "Janitorial/Custodial".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Arctic National Wildlife Refuge, Alaska, Coastal Plain Resource Assessment and Draft Legislative Environmental Impact Statement

Correction

In notice document 86-26489 beginning on page 42307 in the issue of Monday, November 24, 1986, make the following corrections:

1. On page 42308 in the first column, in the third complete paragraph, in the third line from the bottom, "necessary" should read "unnecessary" and in the fourth line from the bottom, "to" should be removed.

2. On the same page, in the second column, in the second line, after "and" insert "that".

3. On the same page, in the second column, in the first complete paragraph, second line from the bottom, "not" should read "nor".

BILLING CODE 1505-01-D

federal register

Friday
December 5, 1986

Part II

Department of Justice

Bureau of Prisons

Discipline Hearing Officer; Pilot Project; Notice

DEPARTMENT OF JUSTICE

Bureau of Prisons

Discipline Hearing Officer; Pilot Project

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice of Pilot Project.

SUMMARY: The Bureau of Prisons is implementing a pilot project whereby a single person hearing examiner will assume the discipline hearing functions of the Institution Discipline Committee. This approach is intended to test the feasibility of having a one-person, independent hearing officer within a prison facility.

DATE: The Pilot Project is scheduled to formally begin in December 1986.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street NW., Washington, DC 20534. Public comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is implementing a pilot project involving its inmate discipline policy, presently codified in 28 CFR Part 541, Subpart B. The pilot project is intended to test the feasibility of having a one-person, independent hearing officer within a prison facility. Specifically, designated federal institutions will have their existing Institution Discipline Committees (IDCs) replaced by Discipline Hearing Officers (DHOs). Institutions initially taking part in the pilot project include the U.S. Penitentiary, Lewisburg, Pennsylvania; and the Federal Correctional Institutions in Otisville, New York; Danbury, Connecticut; Petersburg, Virginia; Alderson, West Virginia; and Butner, North Carolina.

The pilot project will consist of two models—a combined DHO/Executive Assistant to the Warden and a DHO "circuit rider" (covering both Otisville and Danbury). A research component will compare these two models, plus such additional aspects as trends in discipline fact-finding and sanctioning under the IDC compared to those under the DHO.

The appendix to this notice identifies modifications to the existing inmate discipline policy (28 CFR Part 541), including those areas where the DHO will assume functions previously assigned to the Institution Discipline Committee. Where no specific modification is required, the provisions of the existing rule on inmate discipline apply to DHO hearings. Public comment is invited on these modifications.

Appendix

Discipline Hearing Officer Pilot Project—Procedures To Be Followed

1. The DHO will assume most of the functions of the IDC set forth in the Bureau's policy on inmate discipline, and as specified below. The DHO, like an IDC member, must not have been involved in reporting, investigating, or hearing the incident. The DHO should disqualify himself if he has detailed personal knowledge of the incident before the hearing. Previous IDC functions are to be performed as follows:

a. The DHO is to conduct administrative fact-finding hearings concerning alleged acts of misconduct and violations of prohibited acts (as defined in Chapter 4 of the Bureau of Prisons Program Statement on Inmate Discipline, and in 28 CFR 541.13), including those acts which could result in criminal charges. This entails conducting hearings, making findings, and imposing appropriate sanctions for incidents of inmate misconduct referred to the DHO for disposition following the hearing required before a Unit Discipline Committee (Chapter 6; 28 CFR 541.15).

b. The DHO, as part of the decision-making process, arranges for the presence of the inmate's staff representative (if one is requested); reviews the disciplinary report(s); decides which witnesses need to be called; takes and records testimony relevant to the charges; obtains, reviews, and considers evidence; and determines whether the allegations of misconduct are supported by the evidence submitted (Chapter 7; 28 CFR 541.17).

c. The DHO, after completing the hearing, shall arrive at an appropriate disposition (Chapter 7; 28 CFR 541.18). The DHO may find the inmate did or did not commit a prohibited act. In the latter situation, the DHO will dismiss the charge(s) and expunge the inmate's file of the report and related documents (Chapter 7; 28 CFR 541.17). In the former situation, the DHO may impose and execute, may suspend, and/or may revoke and execute suspended disciplinary sanctions (Chapter 4; 28 CFR 541.13). The action taken by the DHO is to be based upon, but not limited to, the nature of the offense, the background of the inmate found to have committed the offense, and sanctions given in comparable situations.

d. The DHO will prepare a written record of the proceedings (Chapter 7; 28 CFR 541.17) including, but not limited to, the evidence relied upon, the decision, and the reasons for the action. To help ensure that these disciplinary proceedings meet the necessary legal requirements, the DHO will prepare or cause to be prepared a procedural checklist, and, where there is a confidential informant, a separate form on confidential informant information. This information will serve as certification of the hearing procedures. The DHO will provide a copy of the DHO report, along with the procedural checklist, as provided in the current policy on inmate discipline. A completed copy of the confidential informant information is not provided to the inmate.

e. The DHO is to record findings on the Chronological Disciplinary Record form located in the inmate central file.

f. The DHO may order an inmate's placement in disciplinary segregation following the required hearing, only upon determining that the other available dispositions are inadequate to achieve the purpose of punishment and deterrence necessary to regulate the inmate's behavior within acceptable limits (Chapter 9; 28 CFR 541.20). The DHO conducts the hearings for limiting exercise periods pursuant to Chapter 9; 28 CFR 541.21(c)(6).

2. In addition to those IDC functions that are assumed by the DHO, several other modifications to the inmate discipline policy are necessary as a result of the DHO pilot project. These include the following.

a. Restoration of Withheld or Forfeited Statutory Good Time—An application for restoration of good time is to go from the inmate's unit team, through both the DHO and Captain for comments, to the Warden for final decision. This decision may be delegated no lower than the Associate Warden level. The DHO does not have the authority provided the IDC under existing policy (Chapter 4; 28 CFR 541.13) to restore forfeited or withheld statutory good time.

b. Appeals of Discipline Committee Action (Chapter 8; 28 CFR 541.19)—Based on the certification procedure to be completed by the DHO, an inmate who wishes to appeal an action by the DHO should be advised to file that appeal (BP–10) directly with the Regional Director within twenty (20) calendar days of written notice of the DHO's decision and disposition. Except for the initial appeal to the Regional Director, all other provisions of the Administrative Remedy Program Statement (28 CFR, Part 542, Subpart B) apply to appeals of DHO actions. Inmates at institutions involved in the

DHO pilot are not required to file their disciplinary appeal (BP-9) at the institution level. The DHO can receive informal complaints about the procedure and correct mistakes locally before the BP-10 review. The Warden will also review the disciplinary process, including DHO hearings and appeals, to the extent he deems necessary, to assure substantial compliance with the provisions of the discipline policy, as amended by this document.

c. Early Release from Disciplinary Segregation—Releases from disciplinary segregation earlier than the sanction imposed (Chapter 9; 28 CFR 541.20(d)) may be made only upon written approval by the Warden. This may be delegated no lower than the Associate Warden level. Recommendations for early release will be ordinarily originated by the Captain, and will be routed through the DHO for comment (provided the DHO is reasonably available in the institution). If the recommendation is originated by someone other than the Captain, it will be routed through the Captain and the DHO for comment.

d. Review of Inmates in Special Housing Status—The DHO does not conduct review hearings of persons in disciplinary segregation (Chapter 9; 28 CFR 541.20(c)) and in administrative detention, including inmates placed in administrative detention for protection (Chapter 9; 28 CFR 541.22(c) and 28 CFR 541.23(b)). During the pilot period, these reviews should be conducted by appropriate staff designated by the Warden. The time limits and other requirements for such reviews shall be as established by existing policy. The reviews will ordinarily be done by the Captain, but the Warden may designate another person (such as a manager of the Special Housing Unit) to conduct the reviews, provided that person is trained in conducting the reviews and is very familiar with (certified in) inmate discipline matters.

e. Placement in Administrative Detention from Disciplinary Segregation—When an inmate is terminating confinement in disciplinary segregation and placement in general population is not prudent, the Warden (or designee) may order placement in administrative detention. Other requirements of current policy apply. The Captain will advise the inmate of this determination, and is to state the reasons for such action. This advisement is to be separate from the initial action placing the inmate in special housing status (Chapter 9; 28 CFR 541.22).

Dated: December 1, 1986.

Norman A. Carlson,

Director.

[FR Doc. 86-27355 Filed 12-4-86; 8:45 am]
BILLING CODE 4410-05-M

federal register

Friday
December 5, 1986

Part III

Department of Agriculture

Forest Service

Linear Rights-of-Way Fees; Adoption of Rental Fee Schedule; Notice

DEPARTMENT OF AGRICULTURE

Forest Service

Linear Rights-of-Way Fees

AGENCY: Forest Service, USDA.

ACTION: Notice of adoption of rental fee schedule.

SUMMARY: The Forest Service hereby gives notice that it is adopting a new schedule of rental fees for linear rights-of-way across National Forest System lands. The Forest Service has coordinated development of this rental fee schedule with the Bureau of Land Management to maximize consistency in fees and procedures between the two Agencies.

The adopted schedule provides a rental fee schedule by State, County, and type of linear right-of-way use. The Agency will adjust the fee schedule annually based on the Implicit Price Deflator (IPD) index for the Gross National Product (GNP). The schedule is based on sound business management principles, and as far as practicable, is in accordance with comparable commercial practices for establishing fair market rental fees.

EFFECTIVE DATE: The fee schedule is effective on December 5, 1986.

FOR FURTHER INFORMATION CONTACT: William C. Wakefield, Lands Staff, Forest Service, Washington Office at (703–235–2594) or Robert Sipe, Lands Staff, Forest Service, Portland, Oregon Office at (503–221–2921).

SUPPLEMENTARY INFORMATION: On August 14, 1986, the Forest Service published a Notice of proposed policy and procedures for developing a fee schedule for linear rights-of-way (51 FR 29134–29140).

The proposed fee schedule was based on zone land values which provided per acre rental fees by State, County, and type of linear right-of-way use.

Comments on the proposal were due by October 14, 1986.

Analysis of Public Response For Linear Rights-of-Way

The Forest Service received 41 comments on the proposed fee schedule and procedures. The number and percentage of responses by category of respondent is as follows:

Respondent	Number	Percentage
Citizens	0	0
Major Landowners	0	0
Other Government	1	2
Forest Service Field Personnel	14	34
State and Other Public Agencies	0	0
Electric Utility Companies	9	22
Oil and Gas Industry	10	25
Telephone Companies	0	0
Electric Utility Groups	3	7
Trade Associations	4	10
Total	41	100

All of the comments received by the Forest Service have been reviewed and given consideration in reaching the final decision. In some cases, in order to clarify and ensure understanding, comments has been discussed with the respondent. The summary of major comments have been organized by topic and Forest Service response to comments follows.

I. Rental Formula

The proposed linear rights-of-way rental fees per acre (Rental fee/acre) were calculated by taking the right-of-way zone value (ZV) times the differential adjustment (DA) times the amortization rate (AR).

Rental fee/acre = ZV × DA × AR

Generally, reviewers supported the rental calculation formula for development of the fee schedule. This formula is unchanged in the adopted procedures.

A. Right-of-Way Zone Value

The Forest Service right-of-way zones are based on typical raw land values for the types of land which, in the past, the Forest Service and Bureau of Land Management have allowed to be occupied by a linear right-of-way.

These right-of-way zones were not based on the values for urban or suburban residential areas, industrial parks, farms or orchards, recreational properties, or other such types of land. Since the Agency plans to avoid authorizing linear right-of-ways through attractive public use areas such as lakeshores, streamsides, and scenic highway frontages, the value zones did not reflect these types of land values. No representation was made in the proposal that the value zones reflected the land value of private land or other ownerships, unless the land was comparable with the land typically occupied by a right-of-way under permit from the Forest Service or the Bureau of Land Management.

The proposal explained that specific sites within the zones may have actual values higher or lower than the value assigned to the zone and that the zones had been established by State and County jurisdiction for administrative convenience.

Also, the value of timber was not included in the value assigned to the zones, because the timber usually is paid for separately and removed when the right-of-way is cleared.

There was strong support from users to maintain the fee schedule on a basis of typical raw land values over which a linear right-of-way is located. Several commented that they preferred the land value basis to the "going rate" procedure which had been suggested in previous proposals. Users did recommend some changes in the zone values for some counties in Nevada and Wyoming. Also, Forest Service and Bureau of Land Management field personnel recommended zone value changes for counties in several of the Western States. However, after considering overall zone boundaries, only the values for Clark County, Nevada, and Washakie and Hot Springs Counties of Wyoming have been adjusted. Therefore, the final fee schedule retains the zone value concept and uses the land values as originally proposed except for the adjustments made to Clark County, Nevada, and Washakie and Hot Springs Counties of Wyoming.

B. Differential Adjustment

The differential adjustment is a component of the rental formula which adjusts the zone value downward to reflect the differences between rights-of-way authorizations granted by private landowners and those issued by the Government. It was determined that there were two categories of users: (1) Energy pipelines, ditches, canals, and road rights-of-way to be adjusted at 80 percent and (2) electrical transmission, electrical distribution, telephone, and other linear rights-of-way to be adjusted at 70 percent of the zone right-of-way value. A number of electrical utility companies agreed to the 70 percent adjustment for transmission lines but proposed an additional formula for electric distribution lines (35 Kv and below) with a differential adjustment of 15 percent.

A few oil and gas pipeline companies objected to having pipelines placed in the same category as ditches, canals, and roads. They proposed two alternatives, one being a separate category for pipelines and the other of having pipelines combined with the electrical transmission category. An adjustment varying from 60 percent to 80 percent of zone value was suggested.

The August 14, 1986, proposal was formulated with direct input from users, user groups, and trade association in meetings held during the first part of the year. At these meetings, the user representatives agreed to use two

categories and the differential adjustment percentages.

An electric user group and its members believe that rights-of-way for electric distribution lines are sufficiently different from rights-of-way for electric transmission lines to warrant a separate fee system. A number of reasons for this position have been presented.

In previous comments, as well as in response to the August proposal, these respondents have contended that right-of-way rental calculated under the new system should be reduced or eliminated for rights-of-way for gas or electric service or distribution lines which provide service to the Federal Government, its lessees or permittees, or residential or agricultural customers.

The Forest Service agrees that the fee can be waived for any distribution lines which exclusively serve a federal facility. The Forest Service does not agree that fees are not required or should be waived in situations where distribution lines serve other permittees or lessees using National Forest land, such as Ski Areas, Resorts, Oil and Gas lessees, and others. Nothing in these permits or leases provides or conveys any right to electrical service. Where electrical service has been provided, it is because the permittee applied for it and the utility company, in turn, applied to the Forest Service for a right-of-way which was granted. In all such cases, the permit required payment by the utility of an appropriate fee.

Some of these permittees and lessees are some distance from electric service and the utilities feel it is unfair that fees for such rights-of-way be shared with all their rate payers—rather, such fees should be paid by the permittee or lessee. The Forest Service would have no objection to this but the fact of the matter is that National Forest System land is being utilized by facilities owned by the utility and, for that reason, the permit and the annual bill are issued in the name of the utility. While the Forest Service understands that costs to serve permittees or lessees may be higher than average, the Forest Service believes this is a matter more properly resolved with the appropriate State Public Utilities Commission. In those areas where it is deemed to be a problem, the Forest Service will continue to work with the utility companies toward an equitable resolution. However, this situation does not appear to provide any basis for the argument that fees for distribution lines should be separated from fees for transmission lines in the adopted fee schedule.

In addition, the utility group submitted the following statement:

Based on the clear difference between transmission and distribution easements and the need for cost-effective administration, it is recommended that:

- Federal distribution easement valuation should be based on typical industry practices relating to the extent of the rights required.
- Federal distribution easements should be consolidated into one Master Agreement for each Forest or BLM District, to assure cost-effective administration.
- Because of the negligible market value of federal distribution easements, right-of-way fees should be based solely on an administrative cost schedule.

The following was presented as the support for each of the three recommendations:

- Utilities should not be compelled to pay more for distribution easements on federal lands than on private lands. Current rulemaking focuses on transmission easement valuation based on rights far in excess of those commonly required for a distribution line. The net effect is utilities pay excessive fees for federal distribution rights.
- Administration of low value distribution rights is more costly than revenue generated to the Government. Applying the proposed formula to Zone 5 ($500/ac), the projected annual rental for a mile of distribution line is $20/mile. This would not offset the government's annual cost of administering the federal easement
- Private distribution easements—based on rights required—are valued at 10 percent fee value.

The first recommendation asks that distribution easements be valued by sales information based on what industry is paying for similar rights on private land. This is what is commonly referred to as the "Going Rate" method. This concept was dropped from consideration in response to recommendations from industry that the fee schedule be based on the value of the land over which the right-of-way crossed.

The land value method was used as the basis for developing the fee schedule. Since the fee schedule includes all National Forest System and Bureau of Land Management lands, value zones were created to reflect unit values. The zone values are a blend of higher and lower values that have been combined for administrative simplicity. For this same reason the differential adjustment factor of 70 and 80 also were considered to be a blend of higher and lower factors; if more categories were created, the original factors also would have to be changed to reflect the removal of part of the factors.

Reference has been made to the Agencies' March 19 response for not acknowledging the distribution vs. transmission concern. What was not pointed out is that the differential adjustment recommended by both the Forest Service and Bureau of Land Management was 100 and 80 at that time, not the 80 and 70 as was proposed in the August 14 notice. It was during those series of meetings that it was agreed by all to maintain an administratively simple approach for determining rental values. Part of that agreement was to have only two categories of uses. Part of the consideration that was given in reducing the differential adjustment downward was the issue of transmission vs. distribution and not only for electric, but also oil and gas systems.

The Forest Service agrees that, for the most part, industry acquires distribution line right-of-ways free or at a very nominal value. However, this is from landowners who benefit from having the lines located on their property. During the joint Forest Service and Bureau of Land Management linear right-of-way market survey, it was found that in the West, 77 percent of the non-benefitting owners charged for easements. It is the practice of the Forest Service to waive fees for facilities exclusively serving the Government. However, most rights-of-way do not serve the Government.

Therefore, it is our conclusion that distribution lines have been given due consideration in the valuation process and that the fee schedule structure of only two categories meets and supports the objective of developing an administratively simple approach to rental value.

The second recommendation of consolidating easements into master agreements is a practice that has been encouraged for some time by the Forest Service. Users and National Forest field units should consolidate as many authorizations as possible into master agreements/authorizations, to obtain cost-effective administration.

In regard to the third recommendation, the Forest Service does not agree that right-of-way fees should be based solely on an administrative cost schedule. While costs should be recovered, such a method provides no return for use of the land. The fair market value concept covers both use of the land and the cost to administer the lands.

C. Amortization Rate

The proposed formula for calculating rental fees used a Treasury securities "Constant Maturity" rate for analyzing the rent. The final notice was to use the current rate to calculate the final fee schedule.

In lieu of this proposal, a number of respondents suggested that the Forest Service use the end of the second quarter (June 30) as the date to calculate annual fees in order to facilitate budgeting for both the Agency and the permit holder. This suggestion has been adopted.

Therefore, the right-of-way annual rental fee utilized in the adopted fee schedule is calculated using the one-year treasury securities "Constant Maturity" rate for June 30, 1986 (6.41 percent), as published by the Federal Reserve in the statistical release report H. 15 (519). This rate will remain fixed until adjusted as outlined under fee formula updating.

D. Fee Formula Updating

The proposal called for a review of all of the elements in the formula when the cumulative change in the IPD index exceeded ± 30 percent, or a cumulative change in the one-year treasury securities "Constant Maturity" rate exceeded ± 50 percent. The objective of such a review was for the purposes of determining whether market conditions relating to land values and business practices relating to returns on investment have changed sufficiently to warrant an updating of fee schedule.

1. IPD–GNP Index

Reviewers generally supported the use of the IPD index to "trigger" a re-evaluation of annual rental fees.

The adopted procedures is to use the cumulative change in the IPD–GNP index of ± 30 percent to "trigger" a review to determine whether market conditions and business practices have varied sufficiently from the existing formula elements to warrant any revision.

2. One-Year Treasury Rate Index

The majority of reviewers addressed use of this index and all questioned using the one-year Treasury securities "Constant Maturity" rate as a "trigger" for review of the zone land values, due to its inherent volatility and its failure to reflect actual changes in land values.

It was not the intent of the proposal to automatically revise the zone land values when the ± 50 percent change occurs. It was intended to be used as a "trigger" to review all the elements of the formula to determine if market conditions and business practices have changed sufficiently to warrant a revision in elements of the formula. To clarify the policy, it has been revised to state that the one-year Treasury security rate is to remain fixed until such time as the three-year average of the interest rate, as measured for the second quarter of each year, exceeds a cumulative change of plus-or-minus 50 percent. When this occurs, all elements of the fee formula will be reviewed to determine if any of the elements should be changed. If a change or adjustment is indicated, the Forest Service will request public input through the **Federal Register** and otherwise follow the public involvement procedures set forth in 36 CFR Part 216.

The reason for maintaining this index is to establish some ground rules as to when the amortization rate is subject to review and/or change. It was found, by reviewing the past 20-year record of the rate, there would have been only three "triggers" during that time under this index.

II. Fees

A. Billings

Under the proposal, the rental for the ensuing calendar year for any single right-of-way easement or permit would have been the rental per acre from the schedule times the number of acres embraced in the right-of-way rounded to the nearest whole dollar, unless such rental was reduced or waived as provided in Section 2715.24 of the Forest Service Manual.

To assist in reducing the industries' and the Forest Service's administrative costs on billings, the Agency also proposed to implement a system to provide consolidated billing for holders of multiple permits within a National Forest unit. Holders and National Forest field units will need to consolidate as many authorizations as possible into master agreements/authorizations, to achieve cost-effective administration.

Only one comment was received recommending a change in the billing proposal and that was for both the Forest Service and Bureau of Land Management to establish a practice of calculating the number of acres and rods in the grant to two decimal places in accordance with standard industry practices. This recommendation is acceptable to the Forest Service and will be implemented.

B. Application of Schedule

Under the proposal the new fee schedule would apply as follows: *New permits.* New rental fees and permit clauses would be effective on the date of publication of the final notice.

Existing permits. New rental payments and permit clauses would be effective for existing permits at the next scheduled periodic fee adjustment. Most existing permits require a fee readjustment every 5 years. Where a permit does not provide for fee adjustment, the new rates and clauses were to be in effect by 1992. The intent was that all permits would be converted to the new schedule in 5 years, with those having no provisions for readjustment converted in the 5th year.

Very few comments were received on this issue, and the only objection was to the possible retroactive application of the new rates.

The Forest Service has issued permits with provisional terms as conditions subject to the adoption of a new fee procedure.

In some cases, scheduled fee adjustments have been deferred pending adoption of a new procedure. Terms and conditions of a few permits issued during that period contain a clause that the fees would be adjusted upon the adoption of the new procedure.

The Forest Service will apply the new fee schedule to new and existing permits as originally proposed.

C. Phase-In

The proposal would have permitted a phase-in of fees under certain conditions:

(1) The fee would have to be over $100; (2) the increase in the rental fee would have to be in excess of 100 percent; and (3) only the excess over the 100 percent increase would be phased in over a 3-year period. Payments would be made in 3 equal increments plus the annual adjustment.

Half of the comments received were favorable of the proposal. The other half suggested a 5-year phase-in period for rental increases in excess of 500 percent.

Forest Service records indicate that the proposed fee schedule is not likely to result in increases of more than 100 percent. Moreover, no respondent provided data showing increases exceeding 100 percent. Therefore, the 3-year phase-in period appears to be fair to right-of-way holders and to the public, and has been adopted.

D. Advance Payments

The proposal provided that a permit holder could make advance payments for up to 5 years, with the stipulation that the authorizing officer could require an advance lump-sum payment when the annual rental fee was less than $100. At the end of the advance payment period, new fees would be calculated using the then current fee schedule.

All comments received on the advance payment proposal were very supportive. Several stated how beneficial it would be to both the user and the Forest Service.

The payment procedure as proposed is adopted for use within the Forest Service. However, it should be noted that additional payment options are now available. The Act of October 27, 1986, (Pub. L. 99–545) now authorizes the Secretary of Agriculture to accept one-time payments for certain types of linear rights-of-way. The Forest Service presently is reviewing this statutory provision and will propose changes to its Special Use Regulations 36 CFR Part 251 soon to implement this new authority.

III. Permit Terms and Conditions

The proposal called for modification of the permit clauses on relocation and assignability. The requirement for relocation at the user's expense would be dropped and the transfer clause modified to allow authorization to be assigned to qualified parties without change in terms and conditions. These changes would not apply to permits and other special use authorizations that do not pay fair market value fees, such as REA financed facilities.

There was strong support for removal of the relocation clause and the modification of the assignability clause. Therefore, the clause changes will be made to each existing authorization at the time their fees are adjusted to reflect the adopted fee schedule rate.

IV. Schedule

A. Exception

Under the proposal, the Forest Service reserved the right to use individual appraisals or other valuation procedures to calculate fees for those permits located in areas having unique characteristics.

Several comments were received on this item expressing the concern that "unique characteristics" needed to be defined to ensure that no misunderstanding could exist as to when an individual appraisal would be appropriate. In addition to the definition, three other requirements were suggested: (1) The establishment of a threshold relating to the zone values (suggestions included $5,000 per acre or an amount equal to 10 times the zone value); (2) review of appraisals by a qualified Regional Review Appraiser; and (3) opportunity for the permittee to submit an alternative appraisal.

The Forest Service has considered these comments and makes the following changes to clarify the rental fee determination procedure. The authorizing officer must use the fee schedule unless the officer determines that sufficient area within the right-of-way will at a minimum exceed the zone value by a factor of 10 and the expected return is sufficient to initiate a separate appraisal.

Therefore, separate appraisals will occur as exceptions and not as a rule. As to review of appraisals, it already is established Forest Service policy that all appraisals are reviewed before being approved for Agency use and that all appraisals are to be prepared to the standards and format as described in the Uniform Appraisal Standards for Federal Land Acquisition (Department of Justice publication) and/or in certain cases as required by Forest Service Appraisal Handbook 5409.12. Appraisals prepared following these requirements and submitted by permittees will be considered in determining new rental fees.

B. Annual Fee Updating

Under the proposal, the per-acre rental fees in the fee schedules would be adjusted annually by multiplying the current year per-acre rental fee by the annual change (third quarter to third quarter) in the Implicit Price Deflator (IPD) index as published in the *Survey of Current Business* of the U.S. Department of Commerce, Bureau of Economic Analysis.

In the comments received, it was noted the proposal did not specify which (IPD) index was to be used. Several of the reviewers suggested the IPD for the Gross Private Domestic Investment-Nonresidential Fixed index (IPD–GPDI/NR). The IPD index for the Gross National Product was inadvertently omitted in the Forest Service proposal; however, it was identified in the Bureau of Land Management notice and both notices made it clear that the two Agencies were coordinating the proposals to achieve consistent procedures for determining rental fees for linear rights-of-way. In further researching the question on (IPD–GNP) vs (IPD–GPDI/NR), the Department of Commerce was consulted and their recommendation was the use of the broader based IDP–GNP.

Therefore, the final decision adopts use of the IPD–GNP index for annual adjustment of the fee schedule.

Some respondents suggested that the end of the second quarter be used as the basis for the index in order to facilitate budgeting for both the Agency and the permit holder. The IPD–GNP tables are published on an annual and quarterly basis; therefore, the IPD–GNP index value shown for the second quarter will be used to determine the adjustment.

C. Publication

The proposed notice did not address how the schedule would be made available to the public each year.

Several respondents requested that the schedule be published annually. The Forest Service agrees that this will be helpful. Therefore, the current annual schedule will be made available through all National Forest offices prior to mailing of the annual billings. The normal annual adjustment as indicated by the IPD–GNP index will be made automatically each year. In addition, if changes are required in the calculation of the fee schedule, as result of a review "triggered" by changes in the indexes, the Forest Service will request public input through a notice in the **Federal Register** prior to implementation.

D. 1987 Fee Schedule

A request was made to indicate the zone values in relationship to the per acre rental fees. For simplicity, the following table is presented for that purpose. The adopted rental fee schedule by State, county, and type of linear right-of-way use is located in the appendix of this notice.

PER-ACRE RENTAL FEES PER ZONE VALUE

Zone Value	Oil & gas and other energy related pipelines, roads, ditches and canals	Electric transmission lines, telephone, electric distribution, non-energy related pipelines, and other linear rights-of-way
50	2.56	2.24
100	5.13	4.49
200	10.26	8.97
300	15.38	13.46
400	20.51	17.95
500	25.64	22.44
600	30.77	26.92
1000	51.28	44.87

V. Other Comments

A. Fee Exemption for Public Utilities

During an earlier comment period, it was suggested that private investor utilities should be exempt from paying rentals. This contention was addressed in the August 14 notice under other issues raised by respondents and found not to be supported by statute or legislative history.

Some respondents again argued the point that fees are not required under existing law. However, this point is

academic since the adopted fee schedule only applies to those rights-of-way for which a fee is required under existing law.

B. Policy vs Regulation

A number of respondents voiced concern about the Forest Service not implementing the proposed linear rights-of-way fee as a codified rule. These respondents believe a fee schedule established as Agency procedures in its directive system is subject to greater interpretation at all levels than codified rules and can be modified or revoked without public involvement.

The Forest Service is proposing the linear rights-of-way fee changes both in conformance with its Special Use regulations at 36 CFR Part 251 and pursuant to its public notice and comment regulations at 36 CFR Part 216.

The public notice and comment regulations at Part 216 require adequate notice and comment on significant policy and procedures issued as instructions to Forest Service personnel through the Forest Service Manual. The regulations further require that proposals to change *Agency-wide* policy and procedure—such as linear rights-of-way fees—must be published in the **Federal Register**. These public involvement regulations were not promulgated at Agency discretion but are mandated by the National Forest Management Act (16 U.S.C. 1612). Failure to comply with the regulations would subject the Agency to both administrative appeals and litigation, thereby impeding program administration.

Finally, Forest Service personnel are required to carry out instructions in the Forest Service Manual same as any codified rules. The Manual is the primary component of the Agency's directive system, which is the principal basis for the conduct and control of Forest Service programs and activities. If a Manual directive says an employee must do something, the employee must comply, just as an employee must comply with any mandatory provisions of a codified rule. In other words, it is the choice of words used in issuing instructions—not where they are issued and codified—that determines employee discretion or lack thereof in carrying out policy and procedure.

Thus, those affected by the linear rights-of-way fee schedule and related instructions can be assured that any future proposal to change the fee formula will provide the same opportunity for notice and comment as has been provided on the current proposal.

Accordingly, the Forest Service will issue and codify the fee schedule as instructions issued through its internal directive system.

Summary of Final Notice

After considering comments received, the Forest Service hereby adopts a final linear right-of-way fee schedule and procedures that are intended to keep pace with changing economic conditions and to better reflect conditions in the nonfederal market place for linear rights-of-way, as is required by the Federal Land Policy and Management Act of 1976. The major components of the final decision are as follows:

1. *Rental Formula.* The formula developed to calculate annual rental fee is: Rental fee/acre = right-of-way zone value x differential adjustment x amortization rate.

2. *Zone Values.* Rights-of-way zone values to be used are those developed by using land value data from a market survey, permittees, and Forest Service and Bureau of Land Management field offices.

3. *Differential Adjustment.* The differential adjustment factors of 80 percent are to be used for energy pipelines, ditches, canals, and roads and 70 percent for all other uses.

4. *Amortization Rate.* The amortization rate is the one-year treasury securities "Constant Maturity" rate as of June 30, 1986 (6.41 percent), as published by the Federal Reserve in the Statistical release report H. 15 (519).

5. *Application of Schedule.* It is the intent of the Agency that the fee schedule is to be used to calculate the majority of the fees for authorizations. An exception to the rule is permitted when the authorizing officer determines sufficient area within the right-of-way will exceed the zone value by a factor of 10 and the expected valuation is sufficient to warrant a separate appraisal. All appraisals will be prepared to the standards as described in the Uniform Appraisal Standards for Federal land and Section 5409.12 of the Forest Service Appraisal Handbook.

6. *Fees.* The annual fees for the land use authorizations will be the rental per acre from the schedule times the number of acres (to the nearest hundredth acre) in the right-of-way with the total fee rounded to the nearest whole dollar.

This annual fee will be adjusted annually by the second quarter index for the IPD–GNP. A 5-year advance payment is permitted.

New rental fees and modifications of permit clauses will be effective as of the date of the final notice for new authorizations and for existing authorizations when they are periodically scheduled for fee readjustment.

That portion of the new fees that exceeds 100 percent increase over and above $100 may be phased in over a 3-year period.

The following example illustrates how the rental fees are calculated for use in the fee schedule.

Energy pipelines, etc.—$100/acre x 0.80 x 6.41 percent = $5.13/acre rental fee.

Other—$100/acre x 0.70 x 6.41 percent = $4.49/acre rental fee.

7. *Terms and Conditions.* Once an existing permit falls under the fee schedule the authorization will be modified to drop the relocation at the user's expense requirement and the transfer clause modified to allow authorizations to be assigned to qualified parties without change in terms and conditions of the authorizations.

8. *Fee Schedule Updating.* The elements used in the formula to calculate the per acre rental values shall be reviewed when the cumulative change in the IPD–GNP index exceeds ±30 percent, or a cumulative change in the one-year treasury securities "Constant Maturity" rate exceeds ±50 percent. If a change or adjustment is indicated, public input through the Federal Register will be requested.

9. *Effective Date.* The fee schedule system is effective as of the date of this publication. Forest Service Manual directives providing instructions to personnel and Special Use regulations at 36 CFR Part 251 will be rewritten within the year to reflect the adoption of the rental fee schedule and procedures.

Dated: November 20, 1986.

Jeff M. Sirmon,

Acting Chief, Forest Service.

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APPENDIX
FEE SCHEDULES FOR LINEAR RIGHTS-OF-WAY RENTAL RATE/YEAR

STATE	COUNTY	OIL & GAS AND OTHER ENERGY RELATED PIPELINES ROADS, DITCHES AND CANALS	ELECTRIC TRANSMISSION LINES, TELEPHONE, ELECTRIC DISTRIBUTION, NON-ENERGY RELATED PIPELINES, AND OTHER LINEAR RIGHTS-OF-WAY
ALABAMA	All Counties	$20.51/AC/YR	$17.95/AC/YR
ARKANSAS	All Counties	$15.38/AC/YR	$13.46/AC/YR
ARIZONA	APACHE COCHISE GILA GRAHAM LA PAZ MOHAVE NAVAJO PIMA YAVAPAI YUMA COCONINO NORTH OF COLORADO RIVER	$5.13/AC/YR	$ 4.49/AC/YR
	COCONINO SOUTH OF COLORADO RIVER GREENLEE MARICOPA PINAL SANTA CRUZ	$20.51/AC/YR	$17.95/AC/YR
CALIFORNIA	IMPERIAL INYO LASSEN MODOC RIVERSIDE SAN BERNARDINO	$10.26/AC/YR	$ 8.97/AC/YR
	SISKIYOU	$15.38/AC/YR	$13.46/AC/YR
	ALAMEDA ALPINE AMADOR BUTTE CALAVERAS COLUSA CONTRA COSTA DEL NORTE	$25.64/AC/YR	$22.44/AC/YR

STATE	COUNTY	OIL & GAS AND OTHER ENERGY RELATED PIPELINES ROADS, DITCHES AND CANALS	ELECTRIC TRANSMISSION LINES, TELEPHONE, ELECTRIC DISTRIBUTION, NON-ENERGY RELATED PIPELINES, AND OTHER LINEAR RIGHTS-OF-WAY
CALIFORNIA (cont)	EL DORADO FRESNO GLENN HUMBOLDT KERN KINGS LAKE MADERA MARIPOSA MENDICINO MERCED MONO NAPA NEVADA PLACER PLUMAS SACRAMENTO SAN BENITO SAN JOAQUIN SANTA CLARA SHASTA SIERRA SOLANO SONOMA STANISLAUS SUTTER TEHAMA TRINITY TULARE TOULUMNE YOLO YUBA	$25.64/AC/YR	$22.44/AC/YR
	LOS ANGELES MARIN MONTEREY ORANGE SAN DIEGO SAN FRANCISCO SAN LUIS OBISPO SAN MATEO SANTA BARBARA SANTA CRUZ VENTURA	$30.77/AC/YR	$26.92/AC/YR

STATE	COUNTY	OIL & GAS AND OTHER ENERGY RELATED PIPELINES ROADS, DITCHES AND CANALS	ELECTRIC TRANSMISSION LINES, TELEPHONE, ELECTRIC DISTRIBUTION, NON-ENERGY RELATED PIPELINES, AND OTHER LINEAR RIGHTS-OF-WAY
COLORADO	ADAMS ARAPAHOE BENT CHEYENNE CROWLEY ELBERT EL PASO HUERFANO KIOWA KIT CARSON LINCOLN LOGAN MOFFAT MONTEZUMA MORGAN PUEBLO SEDGEWICK WASHINGTON WELD YUMA	$5.13/AC/YR	$ 4.49/AC/YR
	BACA DOLORES GARFIELD LAS ANIMAS MESA MONTROSE OTERO PROWERS RIO BLANCO ROUTT SAN MIGUEL	$10.26/AC/YR	$8.97/AC/YR
	ALAMOSA ARCHULETA BOULDER CHAFFEE CLEAR CREEK CONEJOS COSTILLA CUSTER DENVER DELTA DOUGLAS EAGLE FREMONT	$20.51/AC/YR	$17.95/AC/YR

STATE	COUNTY	OIL & GAS AND OTHER ENERGY RELATED PIPELINES ROADS, DITCHES AND CANALS	ELECTRIC TRANSMISSION LINES, TELEPHONE, ELECTRIC DISTRIBUTION, NON-ENERGY RELATED PIPELINES, AND OTHER LINEAR RIGHTS-OF-WAY
COLORADO (cont)	GILPIN GRAND GUNNISON HINSDALE JACKSON JEFFERSON LAKE LA PLATA LARIMER MINERAL OURAY PARK PITKIN RIO GRANDE SAGUACHE SAN JUAN SUMMIT TELLER	$20.51/AC/YR	$17.95/AC/YR
CONNECTICUT	ALL COUNTIES	$5.13/AC/YR	$ 4.49/AC/YR
FLORIDA	BAKER BAY BRADFORD CALHOUN CLAY COLUMBIA DIXIE DUVAL ESCAMBIA FRANKLIN GADSDEN GILCHRIST GULF HAMILTON HOLMES JACKSON JEFFERSON LAFAYETTE LEON LIBERTY MADISON NASSAU OKALOOSA SANTA ROSA SUWANNEE TAYLOR UNION WAKULLA WALTON WASHINGTON	$30.77/AC/YR	$26.92/AC/YR

STATE	COUNTY	OIL & GAS AND OTHER ENERGY RELATED PIPELINES ROADS, DITCHES AND CANALS	ELECTRIC TRANSMISSION LINES, TELEPHONE, ELECTRIC DISTRIBUTION, NON-ENERGY RELATED PIPELINES, AND OTHER LINEAR RIGHTS-OF-WAY
FLORIDA (cont.)	ALL OTHER COUNTIES	$51.28/AC/YR	$44.87/AC/YR
GEORGIA	ALL COUNTIES	$30.77/AC/YR	$26.92/AC/YR
IDAHO	CASSIA GOODING JEROME LINCOLN MINIDOKA ONEIDA OWYHEE POWER TWIN FALLS	$5.13/AC/YR	$ 4.49/AC/YR
	ADA ADAMS BANNOCK BEAR LAKE BENEWAH BINGHAM BLAINE BOISE BONNER BONNEVILLE BOUNDARY BUTTE CAMAS CANYON CARIBOU CLARK CLEARWATER CUSTER ELMORE FRANKLIN FREMONT GEM IDAHO JEFFERSON KOOTENAI LATAH LEMHI LEWIS MADISON NEZ PERCE PAYETTE SHOSHONE TETON VALLEY WASHINGTON	$15.38/AC/YR	$13.46/AC/YR

STATE	COUNTY	OIL & GAS AND OTHER ENERGY RELATED PIPELINES ROADS, DITCHES AND CANALS	ELECTRIC TRANSMISSION LINES, TELEPHONE, ELECTRIC DISTRIBUTION, NON-ENERGY RELATED PIPELINES, AND OTHER LINEAR RIGHTS-OF-WAY
KANSAS	ALL OTHER COUNTIES	$5.13/AC/YR	$ 4.49/AC/YR
	MORTON	$10.26/AC/YR	$ 8.97/AC/YR
ILLINOIS	ALL COUNTIES	$15.38/AC/YR	$13.46/AC/YR
INDIANA	ALL COUNTIES	$25.64/AC/YR	$22.44/AC/YR
KENTUCKY	ALL COUNTIES	$15.38/AC/YR	$13.46/AC/YR
LOUISIANA	ALL COUNTIES	$30.77/AC/YR	$26.92/AC/YR
MAINE	ALL COUNTIES	$15.38/AC/YR	$13.46/AC/YR
MICHIGAN	ALGER BARAGA CHIPPEWA DICKINSON DELTA GOGEBIC HOUGHTON IRON KEWEENAW LUCE MACKINAC MARQUETTE MENOMINEE ONTONAGON SCHOOLCRAFT	$15.38/AC/YR	$13.46/AC/YR
	ALL OTHER COUNTIES	$20.51/AC/YR	$17.95/AC/YR
MINNESOTA	ALL COUNTIES	$15.38/AC/YR	$13.46/AC/YR
MISSISSIPPI	ALL COUNTIES	$20.51/AC/YR	$17.95/AC/YR
MISSOURI	ALL COUNTIES	$15.38/AC/YR	$13.46/AC/YR

STATE	COUNTY	OIL & GAS AND OTHER ENERGY RELATED PIPELINES ROADS, DITCHES AND CANALS	ELECTRIC TRANSMISSION LINES, TELEPHONE, ELECTRIC DISTRIBUTION, NON-ENERGY RELATED PIPELINES, AND OTHER LINEAR RIGHTS-OF-WAY
MONTANA	BIG HORN BLAINE CARTER CASCADE CHOUTEAU CUSTER DANIELS McCONE MEAGHER DAWSON FALLON FERGUS GARFIELD GLACIER GOLDEN VALLEY HILL JUDITH BASIN LIBERTY MUSSELSHELL PETROLEUM PHILLIPS PONDERA POWDER RIVER PRAIRIE RICHLAND ROOSEVELT ROSEBUD SHERIDAN TETON TOOLE TREASURE VALLEY WHEATLAND WIBAUX YELLOWSTONE	$5.13/AC/YR	$ 4.49/AC/YR
	BEAVERHEAD BROADWATER CARBON DEER LODGE FLATHEAD GALLATIN GRANITE JEFFERSON LAKE LEWIS & CLARK LINCOLN	$15.38/AC/YR	$13.46/AC/YR

STATE	COUNTY	OIL & GAS AND OTHER ENERGY RELATED PIPELINES ROADS, DITCHES AND CANALS	ELECTRIC TRANSMISSION LINES, TELEPHONE, ELECTRIC DISTRIBUTION, NON-ENERGY RELATED PIPELINES, AND OTHER LINEAR RIGHTS-OF-WAY
MONTANA (cont)	MADISON MINERAL MISSOULA PARK POWELL RAVALLI SANDERS SILVER BOW STILLWATER SWEET GRASS	$15.38/AC/YR	$13.46/AC/YR
NEBRASKA	ALL COUNTIES	$5.13/AC/YR	$ 4.49/AC/YR
NEVADA	CHURCHILL CLARK ELKO ESMERALDA EUREKA HUMBOLDT LANDER LINCOLN LYON MINERAL NYE PERSHING WASHOE WHITE PINE	$2.56/AC/YR	$ 2.24/AC/YR
	CARSON CITY DOUGLAS STORY	$25.64/AC/YR	$22.44/AC/YR
NEW HAMPSHIRE	ALL COUNTIES	$15.38/AC/YR	$13.46/AC/YR
NEW MEXICO	CHAVES CURRY DE BACA DONA ANA EDDY GRANT GUADALUPE HARDING HIDALGO LEA	$5.13/AC/YR	$ 4.49/AC/YR

STATE	COUNTY	OIL & GAS AND OTHER ENERGY RELATED PIPELINES ROADS, DITCHES AND CANALS	ELECTRIC TRANSMISSION LINES, TELEPHONE, ELECTRIC DISTRIBUTION, NON-ENERGY RELATED PIPELINES, AND OTHER LINEAR RIGHTS-OF-WAY
NEW MEXICO (cont.)	LUNA MCKINLEY OTERO QUAY ROOSEVELT SAN JUAN SOCORRO TORRENCE	$5.13/AC/YR	$ 4.49/AC/YR
	RIO ARRIBA SANDOUAL UNION	$10.26/AC/YR	$ 8.97/AC/YR
	BERNALILLO CATRON CIBOLA COLFAX LINCOLN LOS ALAMOS MORA SAN MIGUEL SANTA FE SIERRA TAOS VALENCIA	$20.51/AC/YR	$17.95/AC/YR
NEW YORK	ALL COUNTIES	$20.51/AC/YR	$17.95/AC/YR
NORTH CAROLINA	ALL COUNTIES	$30.77/AC/YR	$26.92/AC/YR
NORTH DAKOTA	ALL COUNTIES	$5.13/AC/YR	$ 4.49/AC/YR
OHIO	ALL COUNTIES	$20.51/AC/YR	$17.95/AC/YR
OKLAHOMA	ALL OTHER COUNTIES	$5.13/AC/YR	$ 4.49/AC/YR
	BEAVER CIMARRON ROGER MILLS TEXAS	$10.26/AC/YR	$8.97/AC/YR
	LE FLORE MC CURTAIN	$15.38/AC/YR	$13.46/AC/YR
OREGON	HARNEY LAKE MALHEUR	$5.13/AC/YR	$ 4.49/AC/YR

STATE	COUNTY	OIL & GAS AND OTHER ENERGY RELATED PIPELINES ROADS, DITCHES AND CANALS	ELECTRIC TRANSMISSION LINES, TELEPHONE, ELECTRIC DISTRIBUTION, NON-ENERGY RELATED PIPELINES, AND OTHER LINEAR RIGHTS-OF-WAY
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	COOS CURRY DOUGLAS JACKSON JOSEPHINE	$15.38/AC/YR	$13.46/AC/YR
	BENTON CLACKAMAS CLATSOP COLUMBIA HOOD RIVER LANE LINCOLN LINN MARION MULTNOMAH POLK TILLAMOOK WASHINGTON YAMHILL	$20.51/AC/YR	$17.95/AC/YR
PENNSYLVANIA	ALL COUNTIES	$20.51/AC/YR	$17.95/AC/YR
PUERTO RICO	ALL	$30.77/AC/YR	$26.92/AC/YR

STATE	COUNTY	OIL & GAS AND OTHER ENERGY RELATED PIPELINES ROADS, DITCHES AND CANALS	ELECTRIC TRANSMISSION LINES, TELEPHONE, ELECTRIC DISTRIBUTION, NON-ENERGY RELATED PIPELINES, AND OTHER LINEAR RIGHTS-OF-WAY
SOUTH DAKOTA	BUTTE CUSTER FALL RIVER LAWRENCE MEADE PENNINGTON	$15.38/AC/YR	$13.46/AC/YR
	ALL OTHER COUNTIES	$5.13/AC/YR	$ 4.49/AC/YR
SOUTH CAROLINA	ALL COUNTIES	$30.77/AC/YR	$26.92/AC/YR
TENNESSEE	ALL COUNTIES	$20.51/AC/YR	$17.95/AC/YR
TEXAS	CULBERSON EL PASO HUDSPETH	$5.13/AC/YR	$ 4.49/AC/YR
	ALL OTHER COUNTIES	$30.77/AC/YR	$26.92/AC/YR
UTAH	BEAVER BOX ELDER CARBON DUCHESNE EMERY GARFIELD GRAND IRON JUAB KANE MILLARD SAN JUAN TOOELE UINTAH WAYNE	$5.13/AC/YR	$ 4.49/AC/YR
	WASHINGTON	$10.26/AC/YR	$ 8.97/AC/YR
	CACHE DAGGETT DAVIS MORGAN PIUTE RICH	$15.38/AC/YR	$13.46/AC/YR

STATE	COUNTY	OIL & GAS AND OTHER ENERGY RELATED PIPELINES ROADS, DITCHES AND CANALS	ELECTRIC TRANSMISSION LINES, TELEPHONE, ELECTRIC DISTRIBUTION, NON-ENERGY RELATED PIPELINES, AND OTHER LINEAR RIGHTS-OF-WAY
UTAH (cont.)	SALT LAKE SANPETE SEVIER SUMMIT UTAH WASATCH WEBER	$15.38/AC/YR	$13.46/AC/YR
VERMONT	ALL COUNTIES	$20.51/AC/YR	$17.95/AC/YR
VIRGINIA	ALL COUNTIES	$20.51/AC/YR	$17.95/AC/YR
WASHINGTON	ADAMS ASOTIN BENTON CHELAN COLUMBIA DOUGLAS FRANKLIN GARFIELD GRANT KITTITAS KLICKITAT LINCOLN OKANAGAN SPOKANE WALLA WALLA WHITMAN YAKIMA	$10.26/AC/YR	$ 8.97/AC/YR
	FERRY PEND OREILLE STEVENS	$15.38/AC/YR	$13.46/AC/YR
	CLALLAM CLARK COWLITZ	$20.51/AC/YR	$17.95/AC/YR

STATE	COUNTY	OIL & GAS AND OTHER ENERGY RELATED PIPELINES ROADS, DITCHES AND CANALS	ELECTRIC TRANSMISSION LINES, TELEPHONE, ELECTRIC DISTRIBUTION, NON-ENERGY RELATED PIPELINES, AND OTHER LINEAR RIGHTS-OF-WAY
WASHINGTON (cont)	GRAYS HARBOR ISLAND JEFFERSON KING KITSAP LEWIS MASON PACIFIC PIERCE SAN JUAN SKAGIT SKAMANIA SNOHOMISH THURSTON WAHKIAKUM WHATCOM	$20.51/AC/YR	$17.95/AC/YR
WEST VIRGINIA	ALL COUNTIES	$20.51/AC/YR	$17.95/AC/YR
WISCONSIN	ALL COUNTIES	$15.38/AC/YR	$13.46/AC/YR
WYOMING	ALBANY CAMPBELL CARBON CONVERSE GOSHEN HOT SPRINGS JOHNSON LARAMIE LINCOLN NATRONA NIOBRARA PLATTE SHERIDAN SWEETWATER FREMONT SUBLETTE UINTA WASHAKIE	$5.13/AC/YR	$ 4.49/AC/YR
	BIG HORN CROOK PARK TETON WESTON	$15.38/AC/YR	$13.46/AC/YR

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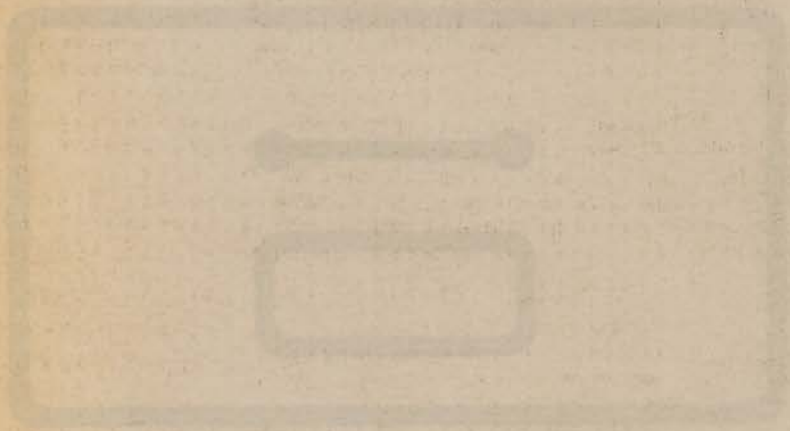
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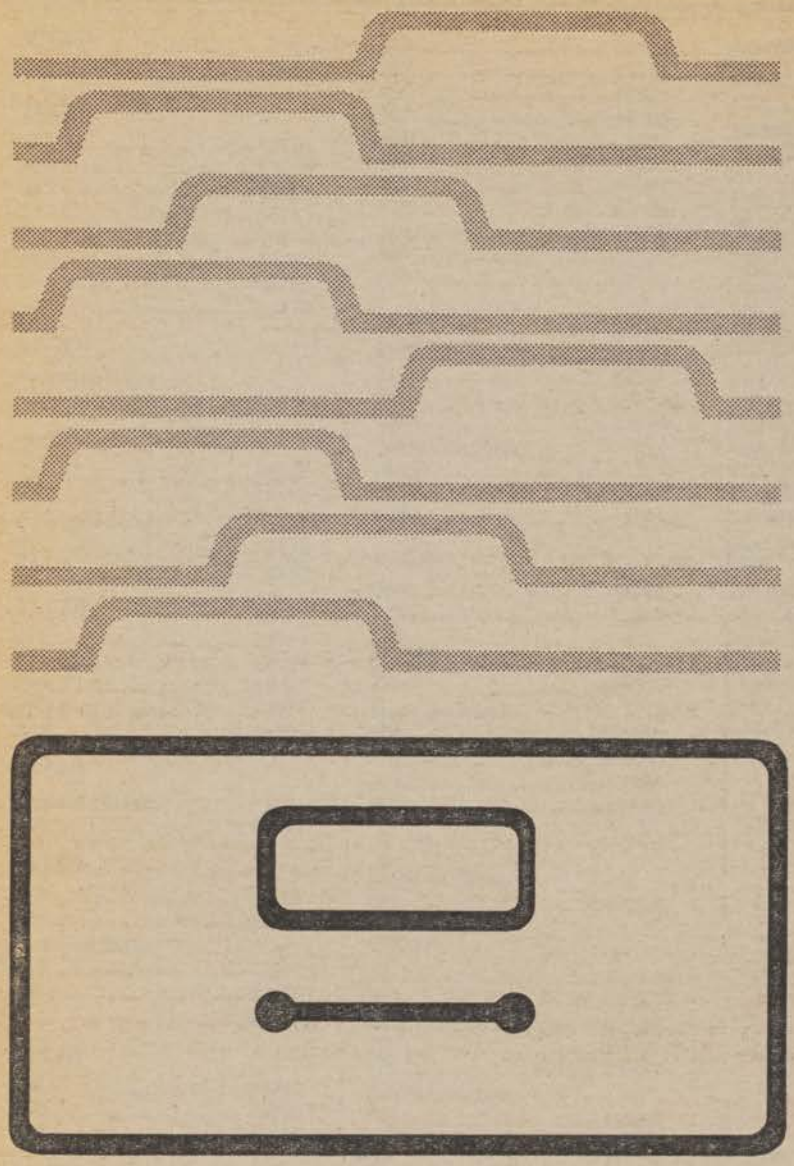
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